



Board of
Behavioral
Sciences

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MEETING NOTICE

Policy and Advocacy Committee November 1, 2012

Department of Consumer Affairs
El Dorado Room
1625 North Market Blvd., #N220
Sacramento, CA 95834

1:30 p.m.

- I. Introductions
- II. Review and Approval of the July 19, 2012 Policy and Advocacy Committee Meeting Minutes
- III. Legislative Update
- IV. Rulemaking Update
- V. Discussion and Recommendations for Possible Regulatory Action Regarding the Implementation of SB 1441, Chapter 548, Statutes of 2008
- VI. Discussion and Recommendations for Possible Action Regarding Proposed Omnibus Bill Amending Business and Professions Code Sections 4980.36, 4999.33, 4980.43(b), 4996.23, 4999.47(a), 4980.54, 4980.72, 4999.60, 4989.68, 4996.3, 4996.18, and 4999.46
- VII. Discussion and Recommendations for Possible Rulemaking Action to Require All Applicants to Submit a National Data Bank Inquiry Result
- VIII. Discussion and Recommendations for Possible Rulemaking Action Regarding Revisions to California Code of Regulations, Title 16, Section 1820.5, Licensed Professional Clinical Counselors: Requirements to Work with Couples and Families
- IX. Discussion and Recommendations for Possible Action to Sponsor Legislation to Allow Licensed Marriage and Family Therapist Applicants to Remediate Specific Coursework
- X. Discussion and Recommendations for Possible Action to Sponsor Legislation to Revise Licensure Requirements for Out-of-State Marriage and Family Therapist and Licensed Professional Clinical Counselor Applicants



Governor
Edmund G. Brown Jr.
State of California
State and Consumer
Services Agency
Department of
Consumer Affairs

- XI. Discussion and Recommendations for Possible Action to Sponsor Legislation to Revise the California Family Code to Allow the Board to Receive Confidential Child Custody Reports for Investigative Purposes
- XII. Public Comment for Items Not on the Agenda
- XIII. Suggestions for Future Agenda Items
- XIV. Adjournment

Public Comment on items of discussion will be taken during each item. Time limitations will be determined by the Chairperson. Items will be considered in the order listed. Times are approximate and subject to change. Action may be taken on any item listed on the Agenda.

THIS AGENDA AS WELL AS BOARD MEETING MINUTES CAN BE FOUND ON THE BOARD OF BEHAVIORAL SCIENCES WEBSITE AT www.bbs.ca.gov.

NOTICE: The meeting is accessible to persons with disabilities. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Christina Kitamura at (916) 574-7835 or by sending a written request to Board of Behavioral Sciences, 1625 N. Market Blvd., Suite S-200, Sacramento, CA 95834. Providing your request at least five (5) business days before the meeting will help ensure availability of the requested accommodation.

Policy and Advocacy Committee Minutes - **DRAFT** July 19, 2012

Department of Consumer Affairs
El Dorado Room
1625 North Market Blvd, #N-220
Sacramento, CA 95834

Members Present

Renee Lonner, Chair, LCSW Member
Dr. Christine Wietlisbach, Public Member
Christina Wong, LCSW Member

Staff Present

Kim Madsen, Executive Officer
Steve Sodergren, Asst. Executive Officer
Marc Mason, Administrative Manager
Rosanne Helms, Legislative Analyst
Christina Kitamura, Administrative Analyst

Members Absent

Dr. Judy Johnson, LEP Member

Guest List

On file

I. Introductions

Renee Lonner, Policy and Advocacy Committee (Committee) Chair, called the meeting to order at approximately 1:45 p.m. Christina Kitamura called roll, and a quorum was established. Staff, Committee members, and public attendees introduced themselves.

II. Review and Approval of the April 19, 2012 Policy and Advocacy Committee Meeting Minutes

Ben Caldwell noted a correction on page 25, agenda item XI. "Concerns about child abuse neglect reporting act" should be corrected to "concerns about the Child Abuse and Neglect Reporting Act."

Jill Esptein, California Association of Marriage and Family Therapists (CAMFT), noted a correction on page 23, "from the Attorney General (AG) can go to the judge and obtain the reports" to "the Attorney General (AG) can go to the judge and petition to obtain the reports."

Dr. Christine Wietlisbach moved to approve the April 19, 2012 Policy and Advocacy Committee meeting minutes as amended. Christina Wong seconded. The Committee voted unanimously (3-0) to pass the motion.

III. Discussion and Possible Action Regarding Possible Revisions to the Retired License Statute

Rosanne Helms reported on restoring a retired license to active status.

AB 2190 gave the Board the authority to issue retired licenses effective January 1, 2011. As of June 2012, the Board has issued 561 retired licenses.

Licensees may request a retired license if they complete the required application, pay the required fee, have a current and active license or have a license that is capable of being renewed, and is not under any type of disciplinary action by the Board.

The use of the term “current and active or capable of being renewed” has been a source of confusion for Board staff and licensees since the retired license law went into effect. For example, a suspended license is capable of being renewed; however, the disciplinary action would make the licensee ineligible for a retired license.

The intent of the phrase “capable of being renewed” was to allow a licensee on inactive status to apply for a retired license without having to first renew their license to active status. An inactive license is capable of being renewed. Furthermore, it would be burdensome to require an inactive licensee to complete continuing education and pay a renewal fee for an active license in order to immediately request a retired license.

Due to this confusion, staff recommends consideration of an amendment to delete the term “capable of being renewed” and instead states that the license must be current and active or inactive.

Current law allows a holder of a retired license to apply to restore his or her license to active status if he or she was issued the retired license less than five years ago. This law is inconsistent with the law regarding renewal of an expired license. An expired license may only be renewed within three years of its expiration.

Staff recommends consideration of an amendment to reduce the timeline to restore a retired license from retired to active status from five years to three years.

Ms. Wong asked if staff knows how many of the 561 retired licensees were actually on inactive status. Ms. Helms responded that she does not have those statistics.

Ms. Madsen added that many of those licensees were a result of the retroactive fingerprint requirement. She explained that when the retroactive fingerprint requirement went into effect, a number of licensees were inactive. But because their license was capable of being renewed to an active status, they were subject to the fingerprint requirement. Many of the licensees were contacting the Board and stating that their licenses were inactive, that they are not practicing, and that they do not want to practice; therefore, why are they required to fingerprint. Those licensees were offered the opportunity to retire their licenses.

Dr. Christine Wietlisbach moved to recommend to the Board to adopt language proposed by staff and reduce the timeline to restore a retired license to active status from 5 to 3 years. Ms. Renee Lonner seconded. The Committee voted unanimously (3-0) to pass the motion.

IV. Discussion and Possible Action Regarding the Use of Electronic Means to Provide Psychotherapy

Ms. Helms reported on therapy via electronic means.

Board licensing law requires a valid state license in marriage and family therapy, clinical social work, educational psychology, or clinical counseling, respectively, before a person can engage

in the practice of any of these professions in this state. This implies that a licensee in another state may not counsel an individual while located in the State of California, unless they hold a California license. If the client is not located in California, the state where the client is located would have jurisdiction. As therapy via telehealth is becoming more common, the Board is receiving an increasing number of questions about this issue. Therefore, clarification in regulations may be helpful.

The California Board of Psychology, also under the Department of Consumer Affairs (DCA), is also considering clarifying telehealth guidelines in regulation. This board is awaiting recommended guidelines from two national organizations currently examining the issue: the American Psychological Association (APA), and the Association of State and Provincial Psychology Boards (ASPPB).

The goal of the Board of Psychology is to have guidelines that are in line with the policies of other states. They expect completed models from these associations will be available for review in the fall.

The Massachusetts Office of Consumer Affairs and Business Regulation licenses mental health professionals in that state. There is currently no language in statute or regulations that specifically discusses therapy performed via telehealth. However, their licensing board has adopted a policy guideline to address questions about the practice of telehealth.

The policy states that therapy via electronic means is considered to occur in both the location of the client and the location of the therapist. Therapy to clients located in Massachusetts falls under the jurisdiction of the Board, regardless of the location of the therapist. If the therapist is not licensed in Massachusetts and the client is located there, it would be considered unlicensed practice.

The policy encourages Massachusetts licensees who would like to perform telehealth services to a client in another jurisdiction to check the practice requirements in the jurisdiction where the client is located.

The Texas Department of State Health Services licenses marriage and family therapists, social workers, and professional counselors in that state. A license is required to counsel any clients in Texas.

The Washington State Department of Health licenses mental health counselors, marriage and family therapists, and social workers. The department indicates they currently do not have specific clarifying regulations, but are looking at the regulations of other states as a possible model.

At this time, when a licensee inquires about telehealth they tell them that they must meet all disclosure and confidentiality requirements. They would also recommend the licensee use an encrypted computer program for online therapy. If they were to receive a complaint about Skype therapy, they may investigate as Skype is not a secured network.

The provider must be credentialed in the state in which they are providing services, and if the client is located in another jurisdiction, they would advise the licensee to contact that jurisdiction for guidance.

Mental health practitioners in Ohio are regulated by the Ohio Counselor, Social Worker, and Marriage and Family Therapist Board. The Ohio Administrative Code (OAC) requires

practitioners providing services to citizens of Ohio to be licensed in Ohio. It also requires an Ohio licensee who is providing services to a client outside of Ohio to comply with the laws and rules of that jurisdiction.

The OAC also specifies a number of safeguards that its licensees providing services via telehealth must utilize:

- Licensees are required to use encrypted methods of service delivery;
- Licensees must have an initial face-to-face meeting with the client, which may be via electronic communications to verify the client's identity;
- Licensees must identify an appropriately trained local professional to provide crisis intervention for the client, if needed; and
- Licensees must provide the client with the telephone numbers of the local crisis hotline and the local emergency mental health hotline.

The Arizona Board of Behavioral Health Examiners licenses mental health professionals in that state. According to the department, in Arizona, mental health services are assumed to take place in the jurisdiction where the client lives. Licensees are required to comply with the laws of that jurisdiction.

Arizona does have some exemptions to licensure that a behavioral health professional from another state who wants to perform services in Arizona may utilize. A non-resident is exempt from licensure if the following conditions are met:

1. The person performs the behavioral health services for no more than 90 days in any year;
2. Is licensed to perform those services in the state or country where they reside; and
3. Informs the client of the limited nature of the services and that they are not licensed in Arizona.

A practitioner performing services under this law is considered under the jurisdiction of the board and bound by the laws of Arizona. Under this law, a licensee from another state could counsel a client via telehealth without an Arizona license if the duration of the counseling was less than 90 calendar days and the conditions listed above are met. A licensee of another state whose client was temporarily travelling to Arizona could do the same.

The Arkansas Board of Examiners in Counseling requires a counselor or a marriage and family therapist licensed in Arkansas who wishes to perform counseling via electronic or technology-assisted mediums to obtain a "Technology-Assisted Distance Counseling or Marriage and Family Therapy Specialization License". This specialization requires specific training approved by the board.

Any telehealth counseling that occurs in Arkansas, whether by a Arkansas counselor or an out of state counselor, is considered to occur in Arkansas and the practitioner must hold the valid specialized license.

The Arkansas Board of Examiners has adopted the National Board of Certified Counselors (NBCC) document titled "The Practice of Internet Counseling" as part of its rules to clarify standards related to counseling via telehealth. This document defines various types of counseling, and outlines standards for ethical practice of internet counseling.

Based on these findings, the Board has a number of options for clarifying the law for therapy via telehealth:

1. Status Quo: The Committee could decide to make no clarifying changes to current law or regulations. Current law requires a valid state license to practice marriage and family therapy, clinical social work, educational psychology, or clinical counseling in California. A therapist must have a valid California license to perform therapy on a client in California. A California licensed therapist would need to check licensing requirements with the other jurisdiction if performing therapy on a client in that jurisdiction.
2. Incorporate National Model or Guidelines: The Committee could direct staff to research models and guidelines of various national associations. The Board could then adopt the model or guideline it found most appropriate, and incorporate it either directly into regulations, or by reference.
3. Draft Regulations: The Committee could direct staff to draft regulations clarifying its policy on telehealth. The draft regulations could specify certain safeguards, if desired by the Board.

Dr. Wietlisbach expressed that it is unclear if, for example, if a person was traveling out-of-state for a week. Which jurisdiction does this fall under? Ms. Helms responded that it is the jurisdiction of the state he/she is located.

Mr. Caldwell commented that his understanding of “located” has a specific meaning that is different from “residing” or “resident.” The term “resident” is used in the elder abuse reporting statutes. “Located” is where the client is at that moment; not where the client lives.

Mr. Caldwell was impressed with the research conducted of other states, and suggested that Board staff provide information regarding the particular ethical codes of the different organizations.

Dr. Wietlisbach stated that there are so many variables and it is not clear.

Ms. Wong stated that whatever is defined as telehealth, the Board needs to look at how to ensure the quality of the mental health service is being provided and that the client will be protected.

Janlee Wong, National Association of Social Workers California Chapter (NASW-CA), stated that it is important not to interchange the idea of consumer protection and quality. He also added that it doesn't matter where the client is located because the Board cannot regulate that. The Board can only regulate the licensee located in California.

Ms. Wong would like to draft language that captures informed consent and confidentiality.

Ms. Lonner stated that the language would also have to differentiate between online therapy versus Skype, where one is able to identify the client.

Ms. Helms stated that language would be drafted that would incorporate some of those features of other states and bring it back to the Committee. She will also prepare a comparison chart of the associations' and NBCC's policies and guidelines.

V. Discussion and Possible Rulemaking Action to Require All Applicants to Submit a National Data Bank Inquiry Result

Steve Sodergren reported on the national data bank inquiry result.

During the 2012 Sunset Review process, the Senate Business, Professions and Economic Development Committee requested an explanation from the Board as to why the Board was not currently using the National Data Bank to conduct background checks on applicants.

The Data Bank, consisting of the National Practitioner Data Bank (NPDB) and the Healthcare Integrity and Protection Data Bank (HIPDB), is a confidential information clearinghouse created by Congress to improve health care quality. This clearinghouse was established to receive and disclose certain final adverse actions against health care practitioners, providers, and suppliers.

The Board has a statutory mandate to enforce laws designed to protect the public from incompetent, unethical, or unprofessional practitioners. In order to comply with this mandate the Board requires both a Department of Justice (DOJ) and Federal Bureau of Investigation (FBI) criminal history background check on all applicants for licensure. Currently, the Board does not conduct a review of the applicant's employment background and disciplinary history. The Board indicated that it has an interest in using this resource as another tool to conduct background checks and was exploring options to best incorporate its use.

While the Board has the ability to query individuals, this may not be feasible because (1) it would increase the time it would take the board to process an application for licensure and (2) licensure could be delayed and additional deficiencies could be generated if the applicant did not provide the Board with the exact name under which any discipline had been reported to the NPDB-HIPDB. Also, the current fee for each query is about \$6.00 per practitioner for each Data Bank: the NPDB or the HIPDB. This fee is assessed even if the query is improperly submitted or lacks information.

One option for the Board would be to require applicants to submit a Self Query Report. The requirement for applicants to submit a Self Query Report would further assist the Board in determining if an applicant has been the subject of discipline in another state prior to making a license decision to grant or deny a license. This would give the Board an additional tool to assist in meeting its mandate to protect the public.

The NPDB-HIPDB Web site guides a practitioner on how to request a Self-Query. According to the NPDB-HIPDB main Web page, a person would select services for a "Practitioner" or for an "Organization." The practitioner must print the self-query request, sign and date it in the presence of a notary public, and mail the notarized self-query to the address specified by the NPDB-HIPDB. Upon receipt of the notarized self-query request, the NPDB-HIPDB would then process, in approximately two business days, the self-query and electronically alert the practitioner via e-mail that the self-query is available for on-line viewing. Also, if so elected, the NPDB-HIPDB would issue a paper copy of the self-query to the practitioner. The current fee for each Self-Query is \$8.00 per practitioner for each Data Bank: the NPDB or the HIPDB.

The Health Resources and Services Administration (HRSA) has developed a list of current State Agencies and Licensing Boards responsible for licensing or certifying health care professionals and is actively monitoring those agencies and boards reporting compliance. The Data Bank will add the status of Behavioral Health professions to the Reporting Compliance Status review on July 1, 2012.

Mr. Wong, NASW-CA, stated there is a question on the applications that ask if the applicant has been disciplined by another agency. The query would catch those who do not answer the question honestly, which could be a workload issue if something comes up on the query. He asked if staff knows what percentage of applicants does not answer the question truthfully and how much workload could this generate. Ms. Madsen responded that there are applicants that do not answer truthfully, but she does not know the percentage.

Mr. Wong stated that this could generate a lot of workload because currently, the Board captures only the criminal aspect through the fingerprinting process.

Ms. Madsen stated that this proposal provides another layer of consumer protection, it addresses Board resources; it puts the responsibility on the applicant, but that cost is relatively small considering that this is for licensure.

Ms. Epstein asked why the Board is not doing this now. Ms. Madsen replied that it is a resource issue and a cost issue.

Mr. Caldwell asked if staff will go back and make this retroactive for the licensees. Ms. Madsen responded that she does not know at this time. Mr. Caldwell stated that it is a good consumer protection piece, but is a concern regarding staff resources and workload. He requested that the Board remain cognizant about the added cost to the applicants.

Ms. Lonner suggested making this requirement apply to new applicants. As resources develop over the next few years, begin applying the requirement to licensees, if possible. The retroactive fingerprint model can be used for this process.

Christina Wong moved to direct staff to draft regulations to require all applicants for licensure to submit a National Data Bank Self Query to the Board. Renee Lonner seconded. The Committee voted unanimously (3-0) to pass the motion.

VI. Legislative Update

Ms. Helms briefly reported on a few changes to the legislative update that was provided.

SB 632 regarding marriage and family therapist trainee practicum was an urgency measure. It was signed into law and became effective on July 3, 2012.

SB 1134, CAMFT's bill regarding a psychotherapist's duty to protect, was signed by the Governor.

VII. Rulemaking Update

Ms. Helms briefly reported. The Board will hold a public hearing on two regulation packages. One regulation package is the revision of advertising regulations, two-year practice requirement for supervisors of ASWs, and HIV/AIDS continuing education course for LPCCs. The next regulation package is to implement SB 363 regarding MFT intern experience. The hearing will be held on August 14, 2012.

VIII. Public Comments for Items Not on the Agenda

No public comments were provided.

IX. Suggestions for Future Agenda Items

Mr. Caldwell stated that AAMFT-CA is interested in working with the Committee to make possible changes to the Child Abuse and Neglect Reporting Act. AAMFT-CA hopes to see this matter on the November agenda. Mr. Caldwell suggested inviting a representative from Department of Children and Family Services (DCFS) to give a presentation about how DCFS handles child abuse reports dealing with consensual same-sex activity among adolescents.

Mr. Wong suggested contacting the County Welfare Directors Association of California.

The meeting was adjourned at 3:00 p.m.

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To: Board Members **Date:** October 12, 2012
From: Rosanne Helms **Telephone:** (916) 574-7897
Legislative Analyst
Subject: Review of Board Sponsored and Monitored Legislation

BOARD-SPONSORED LEGISLATION

CHAPTERED BILLS

SB 632 (Emmerson) Marriage and Family Therapist Trainee Practicum

Board-sponsored SB 363 (Chapter 384, Statutes of 2011) became law on January 1, 2012. It allows a trainee to counsel clients while not enrolled in practicum only if the lapse in enrollment is less than 90 days and is immediately preceded, and immediately followed, by enrollment in practicum.

Because the requirement to be enrolled in practicum to counsel clients only applies to specified MFT trainees, (individuals that begin graduate study after August 1, 2012; individuals that begin graduate study before August 1, 2012 but do not complete that study before December 31, 2018; and, individuals that attend a graduate program that meets the enhanced requirements required by Business and Professions Code Section 4980.36) an exception from the requirement should have only applied to those specific MFT trainees. However, the effect of the language signed into law with SB 363 instead requires all trainees to be enrolled in practicum to counsel clients regardless of when the trainee began graduate study.

This bill was an urgency measure to amend this section of licensing law and restore the original intent of requiring only specified MFT trainees to enroll in practicum to counsel clients.

Chapter 50, Statutes of 2012

SB 1527 (Negrete McLeod) Social Workers: Licensing

As part of the Board's examination restructure, each associate social worker (ASW) will be required to take and pass a California law and ethics examination. This bill adds a requirement, similar to the ones in the LMFT and LPCC licensing laws, that an individual seeking ASW registration or LCSW licensure complete coursework in California law and ethics.

This bill also clarifies the acceptability of older licensing exam scores. Under the examination restructure, the Board may use national examinations as the clinical examinations, if the Board determines that they meet California standards. However, SB 704 did not place a limit on when a passing score on the clinical exam must have been obtained. In order to address the question about the acceptability of older exam scores, this bill does the following:

- For applicants who do not hold an out of state license, it allows a passing score on the clinical exam to be accepted by the Board for seven years.
- For applicants who already hold a valid license in good standing in another state, who had passed the exam this Board is requiring as part of their requirements for licensure in that other state, this Board may accept that exam score regardless of age.

Chapter 800, Statutes of 2012

SB 1575 (Senate Business, Professions, and Economic Development Committee) Omnibus Legislation

This bill makes minor, technical, and non-substantive amendments to add clarity and consistency to current licensing law. It also extended the effective date of the examination restructure from January 1, 2013 to January 1, 2014.

Chapter 799, Statutes of 2012

BOARD-SUPPORTED LEGISLATION

CHAPTERED BILLS

AB 40 (Yamada) Elder and Dependent Adult Abuse: Reporting

This bill requires mandated reporters to report suspected instances of elder or dependent adult physical abuse that occurred in a long-term care facility that results in serious bodily injury as follows:

- A mandated reporter must make a telephone report to the local law enforcement agency within 2 hours.
- A written report must then be made to the local ombudsman, the corresponding licensing agency, and the local law enforcement agency within 24 hours.

Chapter 659, Statutes of 2012

AB 367 (Smyth) Board of Behavioral Sciences: Reporting

This bill adds the Board of Behavioral Sciences to the list of boards that are required to report the name and license number of a person whose license has been revoked, suspended, surrendered, or made inactive, to the State Department of Health Care Services within ten working days. This bill has a delayed implementation date of January 1, 2015, to accommodate the Board's transition to the new Breeze Database System.

Chapter 154, Statutes of 2012

AB 1588 (Atkins) Reservist Licensees: Fees and Continuing Education

This bill requires the Board to waive continuing education requirements and renewal fees for a licensee or registrant while he or she is called to active duty as a member of the United States Armed Forces or the California National Guard if he or she meets certain requirements.

Chapter 742, Statutes of 2012

AB 1904 (Block, Butler & Cook) Military Spouses: Temporary Licenses

This bill requires the Board to expedite the licensing process of an applicant who is a spouse of a military member assigned to active duty in California, if they hold a current license for the same profession in another state.

Chapter 399, Statutes of 2012

AB 2570 (Hill) Licensees: Settlement Agreements

This bill closes a loophole in current law that allows a Board licensee or registrant to prohibit a consumer who settles a civil suit with that licensee or registrant from filing a complaint with or cooperating in an investigation of the Board. This bill protects consumers by disallowing “gag clauses” that hamper the ability of a regulatory board to take disciplinary action against a negligent practitioner.

Chapter 561, Statutes of 2012

SB 1172 (Lieu) Sexual Orientation Change Efforts

This bill prohibits a mental health provider from engaging in sexual orientation change efforts with a patient under 18. The bill specifically defines the term “sexual orientation change efforts,” and makes any such efforts on a patient under 18 unprofessional conduct, for which the mental health provider would be subject to disciplinary action by his or her licensing entity.

Chapter 835, Statutes of 2012

SB 1236 (Price) Professions: Board of Psychology: Board of Behavioral Sciences

This bill extends the Board's sunset date until January 1, 2017.

Chapter 332, Statutes of 2012

BILLS THAT FAILED PASSAGE

AB 154 (Beall) Health Care Coverage: Mental Health Services

This bill would have required a health care services plan to provide coverage for the diagnosis and medically necessary treatment of a mental illness under the same terms and conditions applied to other medical conditions. Current mental health parity laws only require coverage for severe mental illness and a child's severe emotional disturbance.

The Board adopted a "support" position on this legislation at its meeting on May 18, 2011.

This bill failed passage in the Senate Health Committee.

AB 171 (Beall) Pervasive Development Disorder or Autism

This bill would have required a health care service plan that provides hospital, medical, or surgical coverage to provide coverage for the screening, diagnosis, and treatment of pervasive developmental disorder or autism. The Board believed this bill would help to close several loopholes that insurers currently use in order to deny coverage to those with pervasive developmental disorder or autism.

This bill failed passage in the Senate Health Committee.

AB 1785 (B. Lowenthal) Medi-Cal Reimbursement for Federally Qualified Health Centers and Rural Health Clinics

This bill would have added licensed marriage and family therapists to the list of health care professionals whose services are reimbursed through Medi-Cal on a per visit basis to federally qualified health centers and rural health clinics. The Board agreed that its licensed marriage and family therapists have the qualifications to be included in this group of professionals.

This bill failed passage in the Assembly Appropriations Committee.

BOARD MONITORED LEGISLATION:

CHAPTERED BILLS

SB 1134 (Yee) Persons of Unsound Mind: Psychotherapist Duty to Protect

Current law allows no monetary liability or cause of action to arise against a psychotherapist who fails to warn of and protect from a patient's threatened violent behavior, or who fails to predict and warn of and protect from a patient's violent behavior, except where the patient has communicated to the psychotherapist a serious threat of physical violence against a reasonably identifiable victim or victims.

This bill renames the duty of a psychotherapist, defined in Section 43.92 of the Civil Code, from "duty to warn and protect" to "duty to protect."

At its meeting on May 16, 2012, the Board opted to take no position on this bill.

Chapter 149, Statutes of 2012

BILLS THAT FAILED PASSAGE

AB 1932 (Gorell) United States Armed Services: Healing Arts Boards

AB 1932 would have required the Board to annually issue a written report to the Department of Veterans Affairs and to the Legislature that details the Board's method of evaluating education, training, and experience obtained in military service. The report would have had to state whether the military education, training, and experience could be applied to the Board's licensing requirements.

The Board is supportive of allowing military education, training, and experience to be used toward licensing requirements if it is equivalent to the Board's current licensing requirements. The Board has very specific requirements for evaluating education and experience in its licensing laws. Currently, if an applicant for licensure or registration had military education and experience, the Board would conduct a review to determine if that experience is substantially equivalent to current licensing requirements.

The Board already has a procedure in place to evaluate an applicant's education, training and experience, and would perform such an evaluation and maintain records of such a military program if this type of application were received. In addition, it would be very time consuming for the Board's already limited staff to be required to seek out and evaluate scenarios where someone might gain military education or experience toward licensure, before the Board receives an application from such an individual. Therefore, at its May 16, 2012 meeting, the Board adopted an "oppose" position on this bill.

This bill died in the Senate Rules Committee.

AB 1976 (Logue) Acceptance of Military Education and Experience Toward Licensing Requirements

AB 1976 would have required the Board to accept education, training, and experience gained in the military toward licensing requirements unless the Board determines that this education, training, and experience is not substantially equivalent to licensing requirements. It would also have required the Board, if it accredits or approves schools offering education course credits toward licensing requirements, to require schools seeking accreditation or approval to have procedures in place to fully accept an applicant's military education, training and experience toward an educational program which leads to licensure.

The Board believed it should have been excluded from this bill, as it does not accredit or approve schools and it already has a procedure in place to evaluate an applicant's education, training and experience. Such an evaluation would be performed, and records of such a military program maintained for future use, if this type of application were received.

At its meeting on May 16, 2012, the Board took an "oppose" position on this legislation.

This bill failed passage in the Assembly Appropriations Committee.

SB 1183 (Lieu) Board of Behavioral Sciences: Continuing Education

SB 1183 would have removed the Board's authority to approve continuing education (CE) providers, and instead would have required that Board licensees obtain their required CE from an accredited educational institution, or a CE provider that is approved by an accrediting organization, such as a professional association, a licensed health facility, a governmental entity, or a continuing education unit of an accredited educational institution.

The Board was concerned that this bill would have removed its authority to set CE standards and requirements. The Board is the sole regulating entity for licensed marriage and family therapists, licensed educational psychologists, licensed clinical social workers, and licensed professional clinical counselors. Therefore, it possesses the experience and knowledge necessary to best set CE standards.

In addition, this bill did not specifically define "accrediting organizations". If standards for an accrediting organization are unspecified, licensees may be permitted to obtain CE credit from any provider approved by an entity that calls itself an "accrediting organization."

The Board has identified a number of issues regarding its CE program, and has formed a CE committee to address these issues. The committee is in the process of working with stakeholders and interested parties to develop regulatory changes to address specified areas of concern.

For these reasons, at its meeting on May 16, 2012, the Board took an "oppose" position on this legislation.

This bill died in the Assembly Appropriations Committee.

Updated: October 10, 2012

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To: Committee Members

Date: October 9, 2012

From: Rosanne Helms
Legislative Analyst

Telephone: (916) 574-7897

Subject: Rulemaking Update

SUBMITTED REGULATORY PROPOSALS

Title 16, CCR Sections 1803, 1845, 1858, 1881; Add Sections 1823, 1888.1, SB 1111: Enforcement Regulations

This proposal is part of an effort by DCA for healing arts boards to individually seek regulations to implement those provisions of SB 1111 and SB 544 (part of DCA's Consumer Protection Enforcement Initiative) that do not require statutory authority.

The intent of SB 1111, which failed passage in 2010, and SB 544, which failed passage in 2011, was to provide healing arts boards under DCA with additional authority and resources to make the enforcement process more efficient. These regulations propose delegation of certain functions to the executive officer, required actions against registered sex offenders, and additional unprofessional conduct provisions to aid in the enforcement streamlining effort.

This proposal was approved by the Board at its meeting on August 18, 2011. This rulemaking was submitted to the Office of Administrative Law (OAL), and published in its California Regulatory Notice Register on March 16, 2012. The proposal is now through the 45-day public comment period, and the public hearing was held on May 1, 2012. Board staff has reviewed comments that were received at the public hearing, made amendments to the language based on the public comment, and noticed the changes for a 15-day public comment period. Board staff received an additional request from DCA Legal to make another modification. Staff is currently preparing those proposed amendments for a second 15-day public comment period.

Title 16, CCR Sections 1811, 1870, 1887.3: Revision of Advertising Regulations, Two-Year Practice Requirement for Supervisors of Associate Social Workers (ASWs), and HIV/AIDS Continuing Education Course for LPCCs

This proposal makes three types of revisions to current Board regulations:

1. Revises the regulatory provisions related to advertising by Board licensees. The Board approved the originally proposed text at its meeting on November 18, 2008. Due to changes in regulations from the LPCC regulation package as well as other changes to

the proposed text, staff obtained approval for a revised version of this rulemaking proposal at the August 18, 2011 Board meeting.

2. Revises current Board regulations to include LPCCs in the requirement to take a one-time, seven hour continuing education course covering the assessment and treatment of people living with HIV/AIDS. The Board approved the proposed text at its February 23, 2011 meeting and directed staff to submit a regulation package to make the proposed change.
3. This proposed change, approved by the Board in June 2007, requires supervisors of ASWs to be licensed for two years prior to commencing any supervision.

This rulemaking proposal was submitted to OAL and published in its California Regulatory Notice Register on June 29, 2012. The public hearing was held on August 14, 2012. This proposal will be considered by the Board for final approval on November 8, 2012.

Title 16, CCR Section 1833: Regulations to Implement SB 363 (Marriage and Family Therapist Intern Experience)

SB 363 (Chapter 384, Statutes of 2011) limited the number of client-centered advocacy hours for a marriage and family therapist intern to 500 hours.

This proposal deletes a provision of Board regulations which conflicts with SB 363 and that is no longer needed due to the new legislative provisions enacted by SB 363. This amendment was approved by the Board at its meeting on November 9, 2011. This proposal also deletes an outdated provision in Section 1833 regarding crisis counseling on the telephone, which directly conflicts with telehealth provisions in LMFT licensing law. This amendment was approved by the Board at its meeting on February 29, 2012.

This rulemaking proposal was submitted to OAL and published in its California Regulatory Notice Register on June 29, 2012. The public hearing was held on August 14, 2012. This proposal will be considered by the Board for final approval on November 8, 2012.

Title 16, CCR Section 1888 and Disciplinary Guidelines

This proposal makes several revisions to the Disciplinary Guidelines, which are incorporated by reference into Board regulations. This proposal was approved by the Board at its meeting on November 9, 2011, and additional changes were approved by the Board at its meeting on May 16, 2012.

This rulemaking proposal was submitted to OAL and published in its California Regulatory Notice Register on August 31, 2012. The public hearing was held on October 16, 2012.

PENDING REGULATORY PROPOSALS

Title 16, CCR Section 1888 and Disciplinary Guidelines: SB 1441: Uniform Standards for Substance Abuse

This is a regulatory proposal that the Department of Consumer Affairs (DCA) and the Legislature is asking all healing arts licensing boards to run. It creates uniform standards for

discipline that the boards must abide by in cases of licensee or registrant substance abuse. This proposal was prompted by a concern at the Legislature that there is a lack of a consistent policy across DCA's healing arts boards for dealing with licensees or registrants who abuse drugs and alcohol.

Title 16, CCR Sections 1806, 1816, 1816.2, 1816.3, 1816.4, 1816.5, 1816.6, 1816.7, 1829, 1877; Add Section 1825: Regulations to Implement SB 704 (Examination Restructure)

This proposal revises current Board regulations in order to be consistent with the statutory changes made by SB 704 (Chapter 387, Statutes of 2011), which restructures the examination process for LMFT, LCSW, and LPCC applicants. This proposal was approved by the Board at its meeting on November 9, 2011. It is currently on hold, as the Board was recently successful with its legislation to extend the implementation date of the exam restructure from January 1, 2013 to January 1, 2014.

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To: Committee Members

Date: October 18, 2012

From: Rosanne Helms
Legislative Analyst

Telephone: (916) 574-7897

Subject: Proposed Regulations Incorporating Uniform Standards for Substance Abusing
Healing Arts Licensees

Summary

This is a regulatory proposal that the Department of Consumer Affairs (DCA) and the Legislature is asking all healing arts licensing boards to run. It creates uniform standards for discipline that the boards must abide by in cases of licensee or registrant substance abuse.

Problem Statement

This proposal was prompted by a concern at the Legislature that there is a lack of a consistent policy across DCA's healing arts boards for dealing with licensees or registrants who abuse drugs and alcohol.

Background

Senate Bill 1441 (Ridley-Thomas) Statutes of 2008, Chapter 548, was signed in September 2008. The bill required DCA to establish the Substance Abuse Coordination Committee (SACC). The SACC, comprised of the executive officers of the DCA's healing arts boards, was tasked with formulating, by January 1, 2010, uniform and specific standards in specified areas that each board would be required to use in dealing with substance abusing licensees.

The goal of this process was to create consistent and uniform standards which healing arts boards would adopt through regulation, allowing consumers better and more consistent protection from substance abusing licensees.

Summary of the Uniform Standards

SB 1441 outlined 16 separate topic areas for which the SACC formulated uniform standards:

1. Specific requirements for a clinical diagnostic evaluation of the licensee, including but not limited to, required qualifications for the providers evaluating the licensee.
2. Specific requirements for the temporary removal of the licensee from practice, in order to enable the licensee to undergo a clinical diagnostic evaluation and any treatment recommended by the evaluator and approved by the board, and specific criteria that the licensee must meet before being permitted to return to practice on a full-time or part-time basis.

3. Specific requirements that govern the ability of the licensing board to communicate with the licensee's employer about the licensee's status and condition.
4. Standards governing all aspects of required testing, including, but not limited to, frequency of testing, randomness, method of notice to the licensee, number of hours between the provision of notice and the test, standards for specimen collectors, procedures used by specimen collectors, the permissible locations of testing, whether the collection process must be observed by the collector, backup testing requirements when the licensee is on vacation or otherwise unavailable for local testing, requirements for the laboratory that analyzes the specimens, and the required maximum timeframe from the test to the receipt of the result of the test.
5. Standards governing all aspects of group meeting attendance requirements, including, but not limited to, required qualifications for group meeting facilitators, frequency of required meeting attendance, and methods of documenting and reporting attendance or nonattendance by licensees.
6. Standards used in determining whether inpatient, outpatient, or other type of treatment is necessary.
7. Worksite monitoring requirements and standards, including, but not limited to, required qualifications of worksite monitors, required methods of monitoring by worksite monitors, and required reporting by worksite monitors.
8. Procedures to be followed when a licensee tests positive for a banned substance.
9. Procedures to be followed when a licensee is confirmed to have ingested a banned substance.
10. Specific consequences for major violations and minor violations.
11. Criteria that a licensee must meet in order to petition for return to practice on a full time basis.
12. Criteria that a licensee must meet in order to petition for reinstatement of a full and unrestricted license.
13. If a board uses a private-sector vendor that provides diversion services, standards for immediate reporting by the vendor to the board of any and all noncompliance with any term of the diversion contract or probation; standards for the vendor's approval process for providers or contractors that provide diversion services, including, but not limited to, specimen collectors, group meeting facilitators, and worksite monitors; standards requiring the vendor to disapprove and discontinue the use of providers or contractors that fail to provide effective or timely diversion services; and standards for a licensee's termination from the program and referral to enforcement.
14. If the board uses a private-sector vendor that provides diversion services, the extent to which licensee participation in that program shall be kept confidential from the public.
15. If a board uses a private-sector vendor that provides diversion services, a schedule for external independent audits of the vendor's performance in adhering to the standards adopted by the committee.
16. Measurable criteria and standards to determine whether each board's method of dealing with substance-abusing licensees protects patients from harm and is effective in assisting its licensees in recovering from substance abuse in the long term.

Proposed Regulations

Based on the standards created by the SACC, Board staff drafted amendments which incorporated the uniform standards into the Disciplinary Guidelines, as appropriate. Standards 13 through 16 were not incorporated. These standards involve either diversion programs, which the Board does not have, or data collection, which is an internal Board function not appropriately addressed through regulations.

The resulting “Uniform Standards Related to Substance Abuse and Disciplinary Guidelines” consists of four parts:

1. **Uniform Standards Related to Substance Abuse:** This is a new section and would apply to licensees or registrants who test positive for a controlled substance, or whose license or registration is on probation due to a substance abuse problem.
2. **Penalty Guidelines:** This section was already part of the Disciplinary Guidelines; it lists types of violations and the range of penalties that may be imposed.
3. **Disciplinary Orders:** This section was already part of the Disciplinary Guidelines. It contains language for proposed optional and standard terms and conditions of probation. It has been modified, where appropriate, to include the new uniform standards related to substance abuse.
4. **Board Policies and Guidelines:** Already part of the Disciplinary Guidelines, this section explains the policies and guidelines for various enforcement actions.

SB 1172

SB 1172 (Negrete McLeod) Chapter 517, Statutes of 2010, requires a healing arts board to suspend a license if the licensee tests positive for any substance that is prohibited under the terms of the licensee’s probation or diversion program.

SB 1172 allows a board to adopt regulations authorizing it to suspend the license of a licensee on probation or in a diversion program for major violations and when the Board orders a licensee to undergo a clinical diagnostic evaluation.

The Uniform Standards Related To Substance Abuse fulfill the requirements of SB 1172.

Past Board Meeting

An earlier draft of these proposed regulations was presented to the Board at its November 9, 2011 meeting. Due to legal questions that were raised about whether the SACC or the DCA boards should be the ones to implement these regulations, the Board directed staff to seek further guidance from DCA before considering the regulations.

Legal Opinions

On April 5, 2012, the Board received a memo from the Department of Consumer Affairs (DCA) Legal Affairs office addressed to all healing arts boards regarding the rulemaking process to implement the Uniform Standards. DCA acknowledged that questions have been raised concerning the Board’s discretion to implement the Uniform Standards, and concerning whether or not the Substance Abuse Coordination Committee (SACC) was the entity with the rulemaking authority over the Uniform Standards to be used by the healing arts boards. These questions emerged following receipt of a Legislative Counsel Bureau’s (Legislative Counsel) opinion on the matter.

DCA requested the Office of the Attorney General review the Legislative Counsel’s opinion. On February 29, 2012 an informal legal opinion was rendered by the Government Law Section of the Office of the Attorney General which addresses the discretion of the boards in adopting the Uniform Standards. DCA indicated that both the Legislative Counsel and the Attorney General concluded that the healing arts boards do not have the discretion to modify the content of the specific terms or conditions that make up the Uniform Standards. Nor do the healing arts boards have the discretion to determine which of the Uniform Standards apply in a particular case. DCA concurs with these opinions.

The Legislative Counsel and the Attorney General offer differing opinions as to whether or not the SACC, or the individual boards, have the authority to promulgate regulations to implement the Uniform Standards. The Legislative Counsel concluded the SACC has the authority to promulgate regulations mandating that the boards implement the Uniform Standards.

However, the Attorney General disagreed with the Legislative Counsel, stating that the SACC was not vested with the authority to implement the Uniform Standards. This authority lies with the individual boards. DCA shares the opinion of the Attorney General.

DCA recommends that healing arts boards move forward as soon as possible to implement the Uniform Standards.

DCA suggested that the boards work with their assigned legal counsel to determine how best to implement the Uniform Standards. Each Board should determine the following:

1. If the Uniform Standards should be placed in a regulation separate from the disciplinary guidelines; and
2. A definition or criteria to determine what constitutes a “substance-abusing licensee”, which should be included in the proposed regulations.

Staff has made modifications to the previous version of the regulations, and asked DCA Legal to review them in order to verify compliance.

- As the Uniform Standards directly affect the Disciplinary Guidelines, staff recommends that they remain one document.
- Rather than specifically defining a “substance-abusing licensee,” which can be difficult to define, staff recommends defining a substance abuse violation for which the Uniform Standards would apply. This is defined as the following circumstances:
 - The Board finds conduct which is a violation that involves drugs and/or alcohol; and
 - The licensee or registrant does not rebut that the violation is a substance abuse violation; and
 - The licensee, registrant, or the Board does not establish that appropriate public protection can be provided with modification or omission of any of the Uniform Standards.

Recommendation

Conduct an open discussion regarding incorporating the Uniform Standards Related to Substance Abuse into Board regulations and the Disciplinary Guidelines. Direct staff to make any discussed or any non-substantive changes and submit to the Board for approval as a regulatory proposal.

Attachments

- A. Proposed revisions to CCR Section 1888 and Disciplinary Guidelines
- B. Deputy Attorney General Opinion
- C. Legislative Counsel Opinion
- D. DCA Legal Opinion
- E. Uniform Standards Regarding Substance Abusing Healing Arts Licensees – Report prepared by DCA Substance Abuse Coordination Committee, April 2011
- F. SB 1441 Text
- G. SB 1172 Text

BOARD OF BEHAVIORAL SCIENCES PROPOSED LANGUAGE

Amend section 1888 in Division 18 of Title 16 of the California Code of Regulations to read as follows:

§1888. UNIFORM STANDARDS RELATED TO SUBSTANCE ABUSE AND DISCIPLINARY GUIDELINES

In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq.), the Board of Behavioral Sciences shall ~~consider the disciplinary guidelines entitled “Board of Behavioral Sciences consider the “Uniform Standards Related to Substance Abuse and~~ Disciplinary Guidelines” [Rev. ~~March 2010~~ October 2012] which are hereby incorporated by reference. The Disciplinary Guidelines apply to all disciplinary matters; the Uniform Standards Related to Substance Abuse apply to cases of substance abuse.

- (a) If the conduct found to be a violation involves drugs and/or alcohol, the violation is a substance abuse violation for purposes of Section 315 of the Code. If the licensee or registrant does not rebut that the violation is a substance abuse violation, then the Uniform Standards Related to Substance Abuse shall apply unless the licensee, registrant, or the Board establishes that, in that particular case, appropriate public protection can be provided with modification or omission of a specific standard as a term of probation.
- (b) Notwithstanding subsection (a), ~~D~~deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the Board in its sole discretion determines that the facts of the particular case warrant such a deviation – for example: the presence of mitigating or aggravating factors; the age of the case; evidentiary problems.

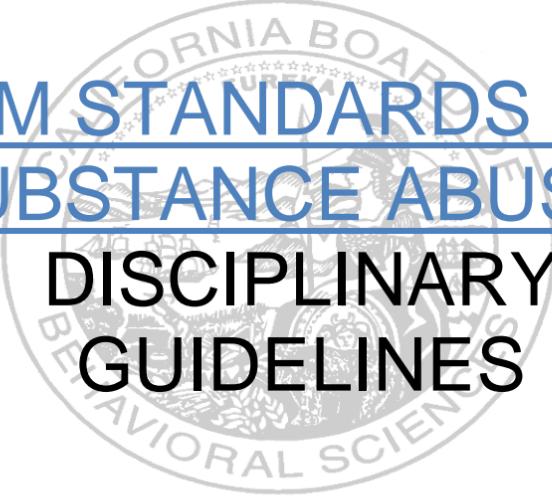
Note: Authority cited: Sections 315, 315.2, 315.4, 4980.60, 4987, and 4990.20, Business and Professions Code; and Section 11400.20, Government Code. Reference: Sections 315, 315.2, 315.4, 480, 4982, 4986.70, 4992.3, and 4999.90, Business and Professions Code; and Sections 11400.20, and 11425.50(e), Government Code.

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State of California

Department of Consumer Affairs

Board of Behavioral Sciences

The seal of the California Board of Behavioral Sciences is a circular emblem. It features a central shield with a balance scale and a book, surrounded by a wreath. The words "CALIFORNIA BOARD OF BEHAVIORAL SCIENCES" are inscribed around the perimeter of the seal.

UNIFORM STANDARDS RELATED
TO SUBSTANCE ABUSE AND
DISCIPLINARY
GUIDELINES

Revised: ~~March 2010~~ October 2012

Additional copies of this document may be obtained by contacting the Board at its office in Sacramento, California, or from its web site at www.bbs.ca.gov.

INTRODUCTION

The Board of Behavioral Sciences (hereinafter “the Board”) is a consumer protection agency with the primary mission of protecting consumers by establishing and maintaining standards for competent and ethical behavior by the professionals under its jurisdiction. In keeping with its mandate, the Board has adopted the following [uniform standards related to substance abuse and](#) recommended guidelines for the intended use for those involved in the disciplinary process: Administrative Law Judges, respondents and attorneys involved in the discipline process, as well as Board members who review proposed decisions and stipulations and make final decisions.

These guidelines consist of ~~two~~[four](#) parts:

[I. Uniform Standards Related to Substance Abuse - for those licensees and registrants who test positive for a controlled substance or whose license or registration is on probation due to a substance abuse violation;](#)

[II. Penalty Guidelines - an identification of the types of violations and range of penalties, for which discipline may be imposed;](#) ~~(Penalty Guidelines); and~~

[III. Model Disciplinary Orders - language for proposed terms and conditions of probation](#) ~~(Model Disciplinary Orders); and~~

[IV. Board Policies and Guidelines - for various enforcement actions.](#)

The Board expects the penalty imposed to be commensurate with the nature and seriousness of the violation.

These penalty guidelines apply only to the formal disciplinary process and do not apply to other alternatives available to the Board, such as citations and fines. See Business and Professions Code Section 125.9 and Title 16 California Code of Regulations Section 1886.

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I. Uniform Standards Related to Substance Abuse

Uniform Standards For Licensees Or Registrants Whose License Or Registration Is On Probation Due To A Substance Abuse Violation

The following standards shall apply in all cases in which a license or registration is placed on probation due, in part, to a substance abuse violation, unless the licensee, registrant, or the Board establishes that, in that particular case, appropriate public protection can be provided with modification or omission of a specific standard as a term of probation.

Clinical Diagnostic Evaluations

Standard #1

Whenever a licensee or registrant is ordered to undergo a clinical diagnostic evaluation, the evaluator shall be a licensed practitioner who holds a valid, unrestricted license to conduct clinical diagnostic evaluations, has three (3) years experience in providing evaluations of health care professionals with substance abuse disorders, and is approved by the Board. The evaluations shall be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations.

Standard #2

The following practice restrictions apply to each licensee or registrant who undergoes a clinical diagnostic evaluation:

1. The Board shall suspend the license or registration during the clinical diagnostic evaluation pending the results of the clinical diagnostic evaluation and review by the Board.
2. While awaiting the results of a clinical diagnostic evaluation, the licensee or registrant shall be randomly drug tested at least two (2) times per week.

Clinical Diagnostic Evaluation Report

Standard #1

The clinical diagnostic evaluation report shall set forth, in the evaluator's opinion, whether the licensee or registrant has a substance abuse problem, whether the licensee or registrant is a threat to himself or herself or others, and recommendations for substance abuse treatment, practice, restrictions, or other recommendations related to the licensee or registrant's rehabilitation and safe practice.

The evaluator shall not have a financial, personal, business or professional relationship with the licensee or registrant. The evaluator shall provide an objective, unbiased, and independent evaluation.

If the evaluator determines during the evaluation process that a licensee or registrant is a threat to himself or herself or others, the evaluator shall notify the board within 24 hours of such a determination.

For all evaluations, a final written report shall be provided to the Board no later than ten (10) days from the date the evaluator is assigned the matter unless the evaluator requests additional information to complete the evaluation, not to exceed 30 calendar days.

**Standard
#2**

The Board shall review the clinical diagnostic evaluation to determine whether or not the licensee or registrant is safe to return to either part-time or full-time practice and what restrictions or recommendations should be imposed on the licensee or registrant based on the application of the following criteria:

1. License or registration type;
2. Licensee or registrant's history;
3. Documented length of sobriety;
4. Scope and pattern of substance abuse;
5. Treatment history;
6. Medical history;
7. Current medical condition;
8. Nature, duration and severity of substance abuse problem; and
9. Whether the licensee or registrant is a threat to himself or herself or others.

No licensee or registrant shall be returned to practice until he or she has at least 30 calendar days of negative drug tests.

**Standard
#6**

When determining if the licensee or registrant should be required to participate in inpatient, outpatient, or any other type of treatment, the Board shall take into consideration the recommendation of the clinical diagnostic evaluation, license or registration type, licensee or registrant's history, length of sobriety, scope and pattern of substance abuse, treatment history, medical history, current medical condition, nature, duration and severity of substance abuse and whether the licensee or registrant is a threat to himself or herself or others.

Supervisor Requirements

**Standard
#7**

If the Board determines that a supervisor is necessary for a particular licensee or registrant, the supervisor must meet the following requirements to be considered for approval by the Board:

1. The supervisor shall not have a current or former financial, personal, business or professional relationship with the licensee or registrant, or other relationship that could reasonably be expected to compromise the ability of the supervisor to render impartial and unbiased reports to the Board. If it is impractical for anyone but the licensee or registrant's employer to serve as the supervisor, this requirement may be waived by the Board; however, under no circumstances shall a licensee or registrant's supervisor be an employee or supervisee of the licensee or registrant.

2. The supervisor's license scope of practice shall include the scope of practice of the licensee or registrant who is being monitored or be another health care professional if no supervisor with like scope of practice is available.
3. The supervisor shall be a current California licensed practitioner and have an active unrestricted license, with no disciplinary action within the last five (5) years.
4. The supervisor shall sign an affirmation that he or she has reviewed the terms and conditions of the licensee or registrant's disciplinary order and agrees to monitor the licensee or registrant as set forth by the Board.

The supervisor must adhere to the following required methods of monitoring the licensee or registrant:

1. Have a face-to-face contact with the licensee or registrant in the work environment on as frequent a basis as determined by the Board, but at least once per week.
2. Interview other staff in the office regarding the licensee or registrant's behavior, if applicable.
3. Review the licensee or registrant's work attendance.

Reporting by the supervisor to the Board shall be as follows:

1. Any suspected substance abuse must be orally reported to the Board and the licensee or registrant's employer within one (1) business day of occurrence. If the occurrence is not during the Board's normal business hours, the oral report must be within one (1) hour of the next business day. A written report shall be submitted to the Board within 48 hours of occurrence.
2. The supervisor shall complete and submit a written report directly to the Board monthly or as directed by the Board. The report shall include:
 - a. the licensee or registrant's name;
 - b. license or registration number;
 - c. supervisor's name and signature;
 - d. supervisor's license number;
 - e. worksite location(s);
 - f. dates licensee or registrant had face-to-face contact with supervisor;
 - g. worksite staff interviewed, if applicable;
 - h. attendance report;
 - i. any change in behavior and/or personal habits; and

- j. any indicators that can lead to suspected substance abuse.

The licensee or registrant shall complete the required consent forms and sign an agreement with the supervisor and the Board to allow the Board to communicate with the supervisor.

**Standard
#5**

Chemical Dependency Support or Recovery Group Meetings

If the Board requires a licensee or registrant to participate in chemical dependency support or recovery group meetings, the Board shall take the following into consideration when determining the frequency of required group meeting attendance:

1. the licensee or registrant's history;
2. the documented length of sobriety;
3. the recommendation of the clinical diagnostic evaluator;
4. the scope and pattern of substance abuse;
5. the licensee or registrant's treatment history; and
6. the nature, duration, and severity of substance abuse.

The group meeting facilitator of a chemical dependency support or recovery group that a Board licensee or registrant is required to participate in must meet the following requirements:

1. Have a minimum of three (3) years experience in the treatment and rehabilitation of substance abuse;
2. Be licensed or certified by the state or other nationally certified organizations to provide substance abuse recovery services;
3. Does not have a financial, personal, business or professional relationship with the licensee or registrant within the last year;
4. Must provide the Board a signed document showing the licensee or registrant's name, the group name, the date and location of the meeting, the licensee or registrant's attendance, and the licensee or registrant's level of participation and progress.
5. Must report to the Board any unexcused absence of a Board licensee or registrant being required to participate within 24 hours.

Major and Minor Violations

Major violations include, but are not limited to, the following:

1. Failure to complete any Board-ordered program;
2. Failure to undergo a required clinical diagnostic evaluation;
3. Committing more than one minor violations of probation conditions and terms;
4. Treating a patient while under the influence of drugs or alcohol;

**Standard
#9, 10**

5. Committing any drug or alcohol offense that is a violation of the Business and Professions Code, or other state or federal law;
6. Failure to report for drug and alcohol testing when ordered;
7. Testing positive for a controlled substance;
8. Knowingly using, making, altering or possessing any object or product in such a way as to defraud a drug test designed to detect the presence of alcohol or a controlled substance.

SB 1172,
B&P
code §
315.4(a)

If a licensee or registrant commits a major violation, the Board shall automatically suspend the license or registration and refer the matter for disciplinary action or other action as determined by the Board.

The consequences for a major violation include, but are not limited to, the following:

1. License or registration shall be suspended;
2. Licensee or registrant must undergo a new clinical diagnostic evaluation;
3. Licensee or registrant must test negative for at least one month of continuous drug testing before being allowed to resume practice;
4. Contract or agreement previously made with the Board shall be terminated; and
5. Licensee or registrant shall be referred for disciplinary action, such as suspension, revocation, or other action determined appropriate by the Board.

Minor violations include, but are not limited to, the following:

1. Failure to submit required documentation in a timely manner;
2. Unexcused attendance at required meetings;
3. Failure to contact a supervisor and/or monitor as required;
4. Any other violations that do not present an immediate threat to the licensee or registrant or to the public.

If a licensee or registrant commits a minor violation, the Board shall determine what action is appropriate. The consequences for a minor violation include, but are not limited to, the following:

1. Removal from practice;
2. Practice limitations;
3. Required supervision;
4. Increased documentation;
5. Issuance of citation and fine or a warning notice;
6. Required re-evaluation and/or testing.

Standard
#8

Positive Test for a Controlled Substance

If a licensee or registrant tests positive for a controlled substance, the Board shall do the following:

- Automatically suspend the license or registration;

- Immediately contact the licensee or registrant and inform him or her that his or her license or registration has been suspended and he or she may not practice until the suspension is lifted; and
- Immediately notify the licensee or registrant's employer that the license or registration has been automatically suspended, and that he or she may not practice until the suspension is lifted.

The Board should do the following, as applicable, to determine whether a positive test for a controlled substance is evidence of prohibited use:

- Consult the specimen collector and the laboratory;
- Communicate with the licensee or registrant and/or treating physician; and
- Communicate with any treatment provider, including a group facilitator.

The Board shall immediately lift the suspension if the positive drug test is not found to be evidence of prohibited use.

Drug Testing Standards

The drug testing standards below shall apply to each licensee or registrant subject to drug testing. At its discretion, the Board may use other testing methods in place of, or to supplement, drug and alcohol testing, if appropriate.

1. Drug testing may be required on any day, including weekends and holidays.
2. Except as directed, the scheduling of drug tests shall be done on a random basis, preferably by a computer program.
3. Licensees or registrants shall be required to make daily contact as directed to determine if drug testing is required.
4. Licensees or registrants shall be drug tested on the date of notification as directed by the Board.
5. Specimen collectors must either be certified by the Drug and Alcohol Testing Industry Association or have completed the training required to serve as a collector for the U.S. Department of Transportation.
6. Specimen collectors shall adhere to the current U.S. Department of Transportation Specimen Collection Guidelines.
7. Testing locations shall comply with the Urine Specimen Collection Guidelines published by the U.S. Department of Transportation, regardless of the type of test administered.
8. Collection of specimens shall be observed.
9. Prior to vacation or absence, alternative drug testing location(s) must be approved by the Board.

10. Laboratories shall be certified and accredited by the U.S. Department of Health and Human Services.

A collection site must submit a specimen to the laboratory within one (1) business day of receipt. A chain of custody shall be used on all specimens. The laboratory shall process results and provide legally defensible test results within seven (7) days of receipt of the specimen. The Board will be notified of non-negative test results within one (1) business day and will be notified of negative test results within seven (7) business days.

Nothing herein shall limit the Board's authority to reduce or eliminate the standards specified herein pursuant to a petition for reinstatement or reduction of penalty filed pursuant to Government Code Section 11522 or statutes applicable to the Board that contain different provisions for reinstatement or reduction of penalty.

**Standard
#4**

Drug Testing Frequency Schedule

The Board may order a licensee or registrant to drug test at any time. In addition, each licensee or registrant shall be tested randomly according to the following drug testing frequency schedule:

<u>Level</u>	<u>Year of Probation</u>	<u>Minimum Range Number of Random Tests</u>
<u>I</u>	<u>Year 1</u>	<u>52-104 per year</u>
<u>II</u>	<u>Years 2 through 5</u>	<u>36-104 per year</u>
<u>III</u>	<u>After Year 5</u>	<u>Once per month*</u>

*If no positive drug tests in the previous 5 consecutive years.

The Board may increase the number of random tests required at its discretion. If the Board suspects or finds that a licensee or registrant has violated the prescribed testing program, or finds that a licensee or registrant has committed a major violation, it may re-establish the testing cycle by placing that licensee or registrant at the beginning of Level I. This is in addition to any other disciplinary action.

Drug Testing Frequency Schedule Exceptions

**Standard
#4**

The Board may make exceptions to the prescribed drug testing frequency schedule for the following reasons:

1. Licensee or Registrant Demonstrates Previous Testing and Sobriety

The licensee or registrant can demonstrate participation in a treatment or monitoring program which requires random testing, prior to being subject to testing by the Board. In such a case, the Board may give consideration to the previous testing by altering the testing frequency schedule so that it is equivalent to the standard.

2. Violations Outside of Employment

A licensee or registrant whose license or registration is placed on probation for a single conviction or incident, or two convictions or incidents, spanning greater than seven years from each other, where alcohol or drugs were a contributing factor, may bypass Level I and participate in Level II of the testing frequency schedule if the violations did not occur at work or on the way to or from work.

3. Not Employed in Health Care Field

The Board may reduce testing frequency to a minimum of twelve (12) times per year if the licensee or registrant is not practicing or working in any health care field. If reduced testing frequency is established for this reason, and the licensee or registrant returns to practice, the licensee or registrant shall notify and obtain approval from the Board. The licensee or registrant shall then be subject to Level I testing frequency for at least 60 days. If the licensee or registrant had not previously met the Level I frequency standard, the licensee or registrant shall be subject to completing a full year at Level I of the testing frequency schedule. If the licensee or registrant had previously met the Level I frequency standard, the licensee or registrant shall be subject to Level II testing after completing Level I testing for at least 60 days.

4. Tolling

The Board may postpone all testing for any person whose probation is placed in a tolling status if the overall length of the probationary period is also tolled. The licensee or registrant shall notify the Board upon his or her return to California and shall be subject to testing as provided in the testing frequency standard. If the licensee or registrant returns to practice and has not previously met the Level I testing frequency standard, the licensee or registrant shall be subject to completing a full year at Level I of the testing frequency schedule. If the licensee or registrant has previously met the Level I testing frequency standard, then Level II shall be in effect.

5. Substance Use Disorder Not Diagnosed

If a licensee or registrant is not diagnosed with a current substance use disorder, a lesser period of monitoring and toxicology screening may be adopted by the Board. This period may not be less than 24 times per year.

Criteria to Petition to Return to Practice

Standard #11

In order to petition to return to full time practice, a licensee or registrant shall have demonstrated all of the following:

1. Sustained compliance with his or her current recovery program;
2. The ability to practice safely as evidenced by current work site reports, evaluations, and any other information related to his or her substance abuse;
3. Must have at least six (6) months of negative drug screening reports and two (2) positive supervisor reports; and
4. Complete compliance with the other terms and conditions of his or her program.

Criteria to Petition for Reinstatement to Unrestricted License or Registration

Standard #12

In order to petition for reinstatement to a full and unrestricted license or registration, a licensee or registrant shall meet all of the following criteria:

1. Demonstrated sustained compliance with the terms of the disciplinary order (if applicable);
2. Demonstrated successful completion of a rehabilitation program (if required);
3. Demonstration of a consistent and sustained participation of activities that promote and support his or her recovery, including, but not limited to, ongoing support meetings, therapy, counseling, relapse prevention plan, and community activities;
4. Demonstrated ability to practice safely; and
5. Continuous sobriety for at least three (3) to five (5) years.

II. Penalty Guidelines

The following is an attempt to provide information regarding violations of statutes and regulations under the jurisdiction of the Board of Behavioral Sciences and the appropriate range of penalties for each violation. Each penalty listed is followed in parenthesis by a number, which corresponds with a number under the chapter "Model Disciplinary Orders." Examples are given for illustrative purposes, but no attempt is made to catalog all possible violations. Optional conditions listed are those the Board deems most appropriate for the particular violation; optional conditions not listed as potential minimum terms, should nonetheless be imposed where appropriate. [Except as provided in the Uniform Standards Related to Substance Abuse,](#) ~~t~~The Board recognizes that the penalties and conditions of probation listed are merely guidelines and that individual cases will necessitate variations which take into account unique circumstances.

If there are deviations or omissions from the guidelines in formulating a Proposed Decision, the Board requires that the Administrative Law Judge hearing the case include an explanation of the deviations or omissions, including all mitigating factors considered by the Administrative Law Judge in the Proposed Decision so that the circumstances can be better understood by the Board during its review and consideration of the Proposed Decision.

Statutes and Regulations Business and Professions Code: (B&P) Title 16, California Code of Regulations: (CCR) General Provisions: (GP) Penal Code: (PC) Welfare and Institutions Code: (WI)	Violation Category	Minimum Penalty	Maximum Penalty
MFT: B&P § 4982.26 LCSW: B&P § 4992.33 LEP: B&P § 4989.58 LPCC: B&P § 4999.90(k) GP: B&P § 729	Engaging in Sexual Contact with Client / Former Client	<ul style="list-style-type: none"> Revocation / Denial of license or registration Cost recovery. 	<ul style="list-style-type: none"> Revocation / Denial of license or registration Cost recovery. <p>The law requires revocation/denial of license or registration.</p>
MFT: B&P § 4982(aa)(1) LCSW: B&P § 4992.3(x)(1) LEP: B&P § 4989.54(y)(1) LPCC: B&P § 4999.90(z)(1)	Engaging In Act with a Minor Punishable as a Sexually Related Crime Regardless of Whether the Act occurred prior to or after registration or licensure. or Engaging in act described in Section 261, 286, 288a, or 289 of the Penal code with a minor or an act described in Section 288 or 288.5 of the Penal Code regardless of whether the act occurred prior to or after the time the registration or license was issued by the Board.	<ul style="list-style-type: none"> Revocation / Denial of license or registration Cost recovery. <p>The Board considers this reprehensible offense to warrant revocation/denial.</p>	<ul style="list-style-type: none"> Revocation / Denial of license or registration Cost recovery. <p>The Board considers this reprehensible offense to warrant revocation/denial.</p>
MFT: B&P § 4982(k), 4982.26 LCSW: B&P § 4992.3(k), 4992.33 CCR § 1881(f) LEP B&P § 4989.58 B&P § 4989.54(n) LPCC: B&P § 4999.90(k) GP: B&P § 480, 726	Sexual Misconduct (Anything other than as defined in B&P Section 729)	<ul style="list-style-type: none"> Revocation stayed 120-180 days minimum actual suspension and such additional time as may be necessary to obtain and review psychological/psychiatric evaluation and to implement any recommendations from that evaluation Take and pass licensure examinations as a condition precedent to resumption of practice 7 years probation Standard terms and conditions Psychological/psychiatric evaluation as a condition precedent to resumption of practice Supervised practice 	<ul style="list-style-type: none"> Revocation / Denial of license or registration Cost recovery. <p>(See B&P 4982.26, 4989.58, 4992.33)</p> <p>The Board considers this reprehensible offense to warrant revocation/denial.</p>

		<ul style="list-style-type: none"> • Psychotherapy • Education • Take and pass licensure examination • Reimbursement of probation program <p>And if warranted, enter and complete a rehabilitation program approved by the Board; abstain from controlled substances/use of alcohol, submit to biological fluid drug and alcohol testing and samples; restricted practice, reimbursement of probation program costs.</p>	
<p>MFT: B&P § 4982(k) LCSW: B&P § 4992.3(k) CCR § 1881(f) LEP: B&P § 4989.54(n) LPCC: B&P § 4999.90(k) GP: B&P § 480</p>	Commission of an Act Punishable as a Sexually Related Crime	<ul style="list-style-type: none"> • Revocation stayed • 120-180 days minimum actual suspension and such additional time as may be necessary to obtain and review psychological/psychiatric evaluation and to implement any recommendations from that evaluation • Psychotherapy • 5 years probation; standard terms and conditions • Psychological/psychiatric evaluation as a condition precedent to the resumption of practice • Supervised practice • Education • Cost recovery • Reimbursement of probation program costs <p>And if warranted, restricted practice.</p>	<ul style="list-style-type: none"> • Revocation / Denial of license or registration • Cost recovery.
<p>MFT: B&P § 4982(c), 4982.1 LCSW: B&P § 4992.3(c), 4992.35 LEP: B&P § 4989.26 LPCC: B&P § 4999.90(c) GP: B&P § 480, 820</p>	Impaired Ability to Function Safely Due to Mental Illness or Physical Illness Affecting Competency or Chemical Dependency	<ul style="list-style-type: none"> • Revocation stayed • 60-90 days actual suspension and such additional time as may be necessary to obtain and review psychological or psychiatric evaluation and to implement any recommendations from that evaluation • 5 years probation; standard terms and conditions • Supervised practice • Cost recovery • Reimbursement of probation program costs. <p><u>In addition:</u></p> <ul style="list-style-type: none"> • MENTAL ILLNESS: Psychological/psychiatric 	<ul style="list-style-type: none"> • Revocation / Denial of license or registration • Cost recovery.

		<p>evaluation; psychotherapy.</p> <ul style="list-style-type: none"> • PHYSICAL ILLNESS: Physical evaluation; and if warranted: restricted practice • CHEMICAL DEPENDENCY Random drug and alcohol testing, Psychological/psychiatric /clinical diagnostic evaluation; supervised practice; therapy; rehabilitation program; abstain from controlled substances/use of alcohol; submit to biological fluid tests and samples; and if warranted: restricted practice. 	
<p>MFT: B&P § 4982(c), 4982.1 LCSW: B&P § 4992.3(c), 4992.35 LEP: B&P § 4989.54(c), 4989.56 LPCC: B&P § 4999.90(c) GP: B&P § 480</p>	Chemical Dependency / Use of Drugs With Client While Performing Services	<ul style="list-style-type: none"> • Revocation stayed • 120-180 days minimum actual suspension and such additional time as may be necessary to obtain and review psychological/psychiatric clinical diagnostic evaluation and to implement any recommendations from that evaluation • Random drug and alcohol testing • 5 years probation • Standard terms and conditions • Psychological/psychiatric /clinical diagnostic evaluation • Supervised practice • Education • Supervised practice • Education • Rehabilitation program • Abstain from controlled substances • Submit to biological fluid test and samples • Cost recovery • Reimbursement of probation program costs <p>And if warranted, psychotherapy; restricted practice</p>	<ul style="list-style-type: none"> • Revocation / Denial of license or registration • Cost recovery.
<p>MFT: B&P § 4982(i) LCSW: B&P § 4992.3(i) CCR § 1881(d) LEP: B&P § 4989.54(m) LPCC: B&P § 4999.90(i) GP: B&P § 480</p>	Intentionally / Recklessly Causing Physical or Emotional Harm to Client	<ul style="list-style-type: none"> • Revocation stayed • 90-120 days actual suspension • 5 years probation • Standard terms and conditions • Supervised practice • Education • Take and pass licensure examinations • Cost recovery • Reimbursement of probation program costs <p>And if warranted, psychological/psychiatric evaluation; psychotherapy, restricted practice.</p>	<ul style="list-style-type: none"> • Revocation / Denial of license or registration application • Cost recovery

Statutes and Regulations Business and Professions Code: (B&P) Title 16, California Code of Regulations: (CCR) General Provisions: (GP) Penal Code: (PC) Welfare and Institutions Code: (WI)	Violation Category	Minimum Penalty	Maximum Penalty
MFT: B&P § 4982(d) LCSW: B&P § 4992.3(d) CCR § 1881(m) LEP: B&P § 4989.54(k) LPCC: B&P § 4999.90(d) GP: B&P § 480	Gross Negligence / Incompetence	<ul style="list-style-type: none"> • Revocation stayed • 60-90 days actual suspension; 5 years probation • Standard terms and conditions; supervised practice • Education • Take and pass licensure examinations • Cost recovery • Reimbursement of probation program costs; And if warranted: psychological/psychiatric evaluation; psychotherapy; rehabilitation program; abstain from controlled substances/use of alcohol, submit to biological fluid <u>drug and alcohol</u> testing; restricted practice.	<ul style="list-style-type: none"> • Revocation / Denial of license or registration • Cost recovery.
MFT: B&P § 4982 CCR § 1845 LCSW: B&P § 4992.3 CCR § 1881 LEP: B&P § 4989.54 CCR § 1858 LPCC: B&P § 4999.90 GP: B&P § 125.6 480, 821	General Unprofessional Conduct	<ul style="list-style-type: none"> • Revocation stayed • 60-90 days actual suspension • 3-5 years probation • Standard terms and conditions • Supervised practice • Education • Cost recovery; reimbursement of probation program And if warranted: psychological/psychiatric evaluation; psychotherapy; rehabilitation program; abstain from controlled substances/use of alcohol, submit to biological fluid <u>drug and alcohol</u> testing; restricted practice, law and ethics course.	<ul style="list-style-type: none"> • Revocation / Denial of license or registration • Cost recovery.

Statutes and Regulations Business and Professions Code: (B&P) Title 16, California Code of Regulations: (CCR) General Provisions: (GP) Penal Code: (PC) Welfare and Institutions Code: (WI)	Violation Category	Minimum Penalty	Maximum Penalty
MFT: B&P § 4980.40(h), 4982(a) LCSW: B&P § 4992.3(a), 4996.2(d), 4996.18(a) LEP: B&P § 4989.20(a)(3), 4989.54(a) LPCC: B&P § 4999.90(a) GP: B&P § 480, 490, 493	Conviction of a Crime Substantially Related to Duties, Qualifications, and Functions of a Licensee / Registrant	<ul style="list-style-type: none"> • Revocation stayed • 60 days actual suspension • 5 years probation • Standard terms and conditions • Supervised practice • Education • Cost recovery • Reimbursement of probation program costs (Costs and conditions of probation depend on the nature of the criminal offense). <p>CRIMES AGAINST PEOPLE: Add: Psychological/psychiatric evaluation; psychotherapy; restitution; and if warranted: rehabilitation program; restricted practice.</p> <p>DRUGS AND ALCOHOL: Add: Random drug and alcohol testing, Psychological/psychiatric/clinical diagnostic evaluation; psychotherapy; supervised practice, rehabilitation program; abstain from controlled substances/use of alcohol, submit to biological fluid testing; and if warranted: restricted practice.</p> <p>FISCAL AND PROPERTY CRIMES: Add: Restitution, and if warranted: psychotherapy; take and pass licensure exams; rehabilitation program; restricted practice.</p>	<ul style="list-style-type: none"> • Revocation / Denial of license or registration • Cost recovery.

Statutes and Regulations Business and Professions Code: (B&P) Title 16, California Code of Regulations: (CCR) General Provisions: (GP) Penal Code: (PC) Welfare and Institutions Code: (WI)	Violation Category	Minimum Penalty	Maximum Penalty
MFT: B&P § 4982(j) LCSW: B&P § 4992.3(j) CCR § 1881(e) LEP: B&P § 4989.54(g) LPCC: B&P § 4999.90(j) GP: B&P § 480, 650, 810	Commission of Dishonest, Corrupt, or Fraudulent Act Substantially Related to Qualifications, Duties and Functions of License	<ul style="list-style-type: none"> • Revocation stayed • 30-60 days actual suspension • 3-5 years probation • Standard terms and conditions • Education • Cost recovery • Law and ethics course • Reimbursement of probation program costs And if warranted. psychological/psychiatric evaluation; supervised practice; psychotherapy; take and pass licensure exams; restricted practice.	<ul style="list-style-type: none"> • Revocation / Denial of license or registration • Cost recovery.
MFT: B&P § 4980.02, 4982(l), 4982(s), 4982(t) CCR § 1845(a), 1845(b) LCSW: B&P § 4992.3(l) 4996.9 CCR § 1881(g), 1881(h) LEP: B&P § 4989.14 4989.54(r) CCR § 1858(b) 1858(j) LPCC: B&P § 4999.90(l), 4999.90(s) 4999.90(t) GP: B&P § 480	Performing, Representing Able to Perform, Offering to Perform, Permitting Trainee or Intern to Perform Beyond Scope of License / Competence	<ul style="list-style-type: none"> • Revocation stayed • 30-60 days actual suspension • 3-5 years probation • Standard terms and conditions • Education • Cost recovery • Reimbursement of probation program costs And if warranted, psychological/psychiatric evaluation; supervised practice; psychotherapy, take and pass licensure exams; restricted practice.	<ul style="list-style-type: none"> • Revocation / Denial of license or registration • Cost recovery.
MFT: B&P § 4982.25 LCSW: B&P § 4992.36 LEP: B&P § 4989.54(h), 4989.54(i) LPCC: B&P § 4990.38 GP: B&P § 141, 480	Discipline by Another State or Governmental Agency	<ul style="list-style-type: none"> • Determine the appropriate penalty by comparing the violation under the other state with California law. And if warranted: take and pass licensure examinations as a condition precedent to practice; reimbursement of probation program costs.	<ul style="list-style-type: none"> • Revocation / Denial of license or registration • Cost recovery.

Statutes and Regulations Business and Professions Code: (B&P) Title 16, California Code of Regulations: (CCR) General Provisions: (GP) Penal Code: (PC) Welfare and Institutions Code: (WI)	Violation Category	Minimum Penalty	Maximum Penalty
MFT: B&P § 4982(b) LCSW: B&P § 4992.3(b), B&P § 4992.7 LEP: B&P § 4989.54(b) LPCC: B&P § 4999.90 (b) GP: B&P § 480, 498, 499	Securing or Attempting to Secure a License by Fraud	<ul style="list-style-type: none"> Revocation / Denial of license or registration application; Cost recovery. 	<ul style="list-style-type: none"> Revocation / Denial of license or registration Cost recovery.
MFT: B&P § 4980, 4982(f) CCR § 1845(a), 1845(b) LCSW: B&P § 4992.3(f), 4996 CCR § 1881(a) LEP: B&P § 4989.54(l) LPCC: B&P § 4999.90(f) GP: B&P § 480	Misrepresentation of License / Qualifications	<ul style="list-style-type: none"> Revocation stayed 60 days actual suspension 3-5 years probation Standard terms and conditions Education Cost recovery Reimbursement of probation program costs <p>And if warranted: take and pass licensure examinations.</p>	<ul style="list-style-type: none"> Revocation / Denial of license or registration Cost recovery.
MFT: B&P § 4982(q) LCSW: B&P § 4992.3(q) - CCR § 1881(l) LEP: B&P § 4989.54(s) LPCC: B&P § 4999.90(q) GP: B&P § 123, 480, 496	Violates Exam Security / Subversion of Licensing Exam	<ul style="list-style-type: none"> Revocation stayed 5 years probation Standard terms and conditions Education Cost recovery Reimbursement of probation program costs 	<ul style="list-style-type: none"> Revocation / Denial of license or registration Cost recovery
MFT: B&P § 4982(g) LCSW: B&P § 4992.3(g), 4992.7 CCR § 1881(b) LEP: CCR § 1858(a) LPCC: B&P § 4999.90(g) GP: B&P § 119, 480	Impersonating Licensee / Allowing Impersonation	<ul style="list-style-type: none"> Revocation stayed 60-90 days actual suspension 5 years probation Supervised practice Standard terms and conditions Psychological/psychiatric evaluation Psychotherapy Cost recovery Reimbursement of probation costs 	<ul style="list-style-type: none"> Revocation / Denial of license or registration Cost recovery

Statutes and Regulations Business and Professions Code: (B&P) Title 16, California Code of Regulations: (CCR) General Provisions: (GP) Penal Code: (PC) Welfare and Institutions Code: (WI)	Violation Category	Minimum Penalty	Maximum Penalty
MFT: B&P § 4982(h) LCSW: B&P § 4992.3(h) CCR § 1881(c) LEP: B&P § 4989.54 (t) LPCC: B&P § 4999.90(h) GP: B&P § 125, 480	Aiding and Abetting Unlicensed / Unregistered Activity	<ul style="list-style-type: none"> • Revocation stayed • 30-90 days actual suspension • 3-5 years probation • Standard terms and conditions • Education • Cost recovery • Reimbursement of probation program costs And if warranted: supervised practice.	<ul style="list-style-type: none"> • Revocation / Denial of license or registration • Cost recovery
MFT: B&P § 4982(m) LCSW: B&P § 4992.3(m) CCR § 1881(i) LEP: B&P § 4989.54 (q) LPCC: B&P § 4999.90(m) GP: B&P § 480	Failure to Maintain Confidentiality	<ul style="list-style-type: none"> • Revocation stayed • 60-90 days actual suspension • 3-5 years probation • Standard terms and conditions • Education • Take and pass licensure exams • Cost recovery • Reimbursement of probation program costs 	<ul style="list-style-type: none"> • Revocation / Denial of license or registration • Cost recovery
MFT: B&P § 728 LCSW: B&P § 728 LPCC: B&P § 728 GP: B&P § 480	Failure to Provide Sexual Misconduct Brochure	<ul style="list-style-type: none"> • Revocation stayed • 1-3 years probation • Standard terms and conditions • Education • Cost recovery • Reimbursement of probation program costs. 	<ul style="list-style-type: none"> • Revocation / Denial of license or registration • Cost recovery
MFT: B&P § 4982(r), 4982(t), 4982(u) CCR § 1833.1, 1845(b) LCSW: B&P § 4992.3(r) LEP: CCR § 1881(h) LPCC: B&P § 4999.90(r) 4999.90(t), 4999.90(u)	Improper Supervision of Trainee / Intern / Associate / Supervisee	<ul style="list-style-type: none"> • Revocation stayed • 30-90 days actual suspension • 2 years probation • Standard terms and conditions • Education • Cost recovery • Reimbursement of probation program costs And if warranted: supervised practice.	<ul style="list-style-type: none"> • Revocation / Denial of license or registration • Cost recovery

Statutes and Regulations Business and Professions Code: (B&P) Title 16, California Code of Regulations: (CCR) General Provisions: (GP) Penal Code: (PC) Welfare and Institutions Code: (WI)	Violation Category	Minimum Penalty	Maximum Penalty
MFT: B&P § 4982(e), 4982(u) LCSW: B&P § 4992.3(e), 4992.3(r) LEP: B&P § 4989.54(f) LPCC: B&P § 4999.90(e) 4999.90(u) GP: B&P § 480	Violations of the Chapter or Regulations by licensees or Registrants / Violations Involving Acquisition and Supervision of Required Hours of Experience	<ul style="list-style-type: none"> • Revocation stayed • Registration on probation until exams are passed and license issued • License issued on probation for one year • Rejection of all illegally acquired hours • Standard terms and conditions • Education • Cost recovery • Reimbursement of probation program costs. 	<ul style="list-style-type: none"> • Revocation / Denial of license or registration • Cost recovery
MFT: B&P § 4982(o) LCSW: B&P § 4992.3(o) CCR § 1881(n) LEP: B&P § 4989.54(p) LPCC: B&P § 4999.90 (o) GP: B&P § 650	Pay, Accept, Solicit Fee for Referrals	<ul style="list-style-type: none"> • Revocation stayed • 3-5 years probation • Standard terms and conditions • Education • Cost recovery • Reimbursement of probation program costs • Law and Ethics course 	<ul style="list-style-type: none"> • Revocation / Denial of license or registration • Cost recovery
MFT: B&P § 4982(n) LCSW: B&P § 4992.3(n) CCR § 1881(j) LEP: B&P § 4989.54(o) LPCC: B&P § 4999.90 (n)	Failure to Disclose Fees in Advance	<ul style="list-style-type: none"> • Revocation stayed • 1 year probation • Standard terms and conditions • Education • Cost recovery • Reimbursement of probation program 	<ul style="list-style-type: none"> • Revocation stayed • 30 days actual suspension • 2 years probation • Standard terms and conditions • Education • Cost recovery • Reimbursement of probation program
MFT: B&P § 4980.46, 4982(p) LCSW: B&P § 4992.3(p) CCR § 1881(k) LEP: B&P § 4989.54(e) LPCC: B&P § 4999.90(p) ALL: CCR § 1811 GP: B&P § 480, 651, 17500	False / Misleading / Deceptive / Improper Advertising	<ul style="list-style-type: none"> • Revocation stayed • 1 year probation • Standard terms and conditions • Education • Cost recovery • Reimbursement of probation program 	<ul style="list-style-type: none"> • Revocation stayed • 30-60 days actual suspension • 5 years probation • Standard terms and conditions • Education • Cost recovery • Reimbursement of probation program costs

Statutes and Regulations Business and Professions Code: (B&P) Title 16, California Code of Regulations: (CCR) General Provisions: (GP) Penal Code: (PC) Welfare and Institutions Code: (WI)	Violation Category	Minimum Penalty	Maximum Penalty
MFT: B&P § 4982(v) LCSW: B&P § 4992.3(s) LEP: B&P § 4989.54(i) LPCC: B&P § 4999.90(v)	Failure to Keep Records Consistent with Sound Clinical Judgment	<ul style="list-style-type: none"> • Revocation stayed • 1 year probation • Standard terms and conditions • Education • Cost recovery • Reimbursement of probation program 	<ul style="list-style-type: none"> • Revocation stayed • 30 days actual suspension • 1-3 years probation • Standard terms and conditions • Education • Cost recovery • Reimbursement of probation program costs
MFT: B&P § 4982(y) LCSW: B&P § 4992.3(v) LEP: B&P § 4989.54(x)	Willful Violation Of Chapter 1 (Commencing With Section 123100) Of Part 1 Of Division 106 Of The Health And Safety Code	<ul style="list-style-type: none"> • Revocation stayed • 1 year probation • Standard terms and conditions • Education • Cost recovery • Reimbursement of probation program costs 	<ul style="list-style-type: none"> • Revocation stayed • 30 days actual suspension • 1-3 years probation • Standard terms and conditions • Education • Cost recovery • Reimbursement of probation program costs
MFT: B&P § 4982(z) LCSW: B&P § 4992.3(w)	Failure To Comply With Section 2290.5 (Telemedicine)	<ul style="list-style-type: none"> • Revocation stayed • 1 year probation • Standard terms and conditions • Education • Cost recovery; • Reimbursement of probation program costs. 	<ul style="list-style-type: none"> • Revocation stayed • 30 days actual suspension • 1-3 years probation • Standard terms and conditions • Education • Cost recovery • Reimbursement of probation program costs

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III. Model Disciplinary Orders

Model Disciplinary Orders are divided into two categories. The first category consists of **Optional Terms and Conditions of Probation** that may be appropriate as demonstrated in the Penalty Guidelines depending on the nature and circumstances of each particular case. The second category consists of the **Standard Terms and Conditions of Probation** which must appear in all Proposed Decisions and proposed stipulated agreements.

To enhance the clarity of a Proposed Decision or Stipulation, the Board requests that all optional conditions (~~1-46~~18) that are being imposed be listed first in sequence followed immediately by all of the standard terms and conditions, which include cost recovery (~~47-32~~19-34).

Optional Terms and Conditions of Probation

Depending on the nature and circumstances of the case, the optional terms and conditions of probation that may appear are as follows:

1. Actual suspension
2. Psychological / Psychiatric evaluation
3. Psychotherapy
4. [Clinical Diagnostic Evaluation](#)
- ~~4-5.~~ Supervised Practice
- ~~5-6.~~ Education
- ~~6-7.~~ Take and Pass licensure examinations
- ~~7-8.~~ Rehabilitation Program
- ~~8-9.~~ Abstain from Controlled Substances/~~Submit to Biological Fluid Testing and Samples~~ [Submit to Random Drug and Alcohol Testing](#)
- ~~9-10.~~ Abstain from Use of Alcohol / ~~Submit to Biological Fluid Testing and Samples~~ [Submit to Random Drug and Alcohol Testing](#)
- ~~10-11.~~ Restricted Practice
- ~~11-12.~~ Restitution
- ~~12-13.~~ Reimbursement of Probation Program
- ~~13-14.~~ Physical Evaluation
- ~~14-15.~~ Monitor Billing System
- ~~15-16.~~ Monitor Billing System Audit
- ~~16-17.~~ Law and Ethics Course

1. Actual Suspension

A. Commencing from the effective date of this decision, respondent shall be suspended from the practice of _____ for a period of ____ days.

OR

B. Commencing from the effective date of this decision, respondent shall be suspended from the practice of _____ for a period of ____ days, and such additional time as may be necessary to obtain and review [the clinical diagnostic](#), psychological or psychiatric evaluation, to implement any recommendations from that evaluation, and to successfully complete the required licensure

examinations as a condition precedent to resumption of practice as outlined in condition #____ (Take and pass licensure examinations).

Respondent shall be responsible for informing his or her employer of the Board's decision, and the reasons for the length of suspension. Respondent shall submit documentation and/or evidence demonstrating satisfactory compliance with this condition. Prior to the lifting of the actual suspension of the license, the Board shall receive pertinent documentation confirming that respondent is safe to return to practice under specific terms and conditions as determined by the Board.

2. Psychological / Psychiatric Evaluation

Within 90 days of the effective date of this decision, and on a periodic basis thereafter as may be required by the Board or its designee, respondent shall complete a psychological or psychiatric evaluation by such licensed psychologists or psychiatrists as are appointed by the Board. The cost of such evaluation shall be borne by respondent. Failure to pay for the report in a timely fashion constitutes a violation of probation.

Such evaluator shall furnish a written report to the Board or its designee regarding respondent's judgment and ability to function independently and safely as a counselor and such other information as the Board may require. Respondent shall execute a Release of Information authorizing the evaluator to release all information to the Board. Respondent shall comply with the recommendations of the evaluator.

Note: If supervised practice is not part of the order, and the evaluator finds the need for supervised practice, then the following term shall be added to the disciplinary order. If a psychological or psychiatric evaluation indicates a need for supervised practice, (within 30 days of notification by the Board), respondent shall submit to the Board or its designee, for its prior approval, the name and qualification of one or more proposed supervisors and a plan by each supervisor by which the respondent's practice will be supervised.

If respondent is determined to be unable to practice independently and safely, upon notification, respondent shall immediately cease practice and shall not resume practice until notified by the Board or its designee. Respondent shall not engage in any practice for which a license issued by the Board is required, until the Board or its designee has notified the respondent of its determination that respondent may resume practice.

(FYI: The Board requires the appointment of evaluators who have appropriate knowledge, training, and experience in the area involved in the violation).

3. Psychotherapy

Respondent shall participate in ongoing psychotherapy with a California licensed mental health professional who has been approved by the Board. Within 60 days of the effective date of this decision, respondent shall submit to the Board or its designee for its prior approval the name and qualifications of one or more therapists of respondent's choice. Such therapist shall possess a valid California license to practice and shall have had no prior business, professional, or personal relationship with respondent, and shall not be the respondent's supervisor. Counseling shall be at least once a week unless otherwise determined by the Board. Respondent shall continue in such therapy at the Board's discretion. Cost of such therapy is to be borne by respondent.

Respondent may, after receiving the Board's written permission, receive therapy via videoconferencing if respondent's good faith attempts to secure face-to-face counseling are unsuccessful due to the unavailability of qualified mental health care professionals in the area. The Board may require that respondent provide written documentation of his or her good faith attempts to secure counseling via videoconferencing.

Respondent shall provide the therapist with a copy of the Board's decision no later than the first counseling session. Upon approval by the Board, respondent shall undergo and continue treatment until the Board or its designee determines that no further psychotherapy is necessary.

Respondent shall take all necessary steps to ensure that the treating psychotherapist submits quarterly written reports to the Board concerning respondent's fitness to practice, progress in treatment, and to provide such other information as may be required by the Board. Respondent shall execute a Release of Information authorizing the therapist to divulge information to the Board.

If the treating psychotherapist finds that respondent cannot practice safely or independently, the psychotherapist shall notify the Board within three (3) working days. Upon notification by the Board, respondent shall immediately cease practice and shall not resume practice until notified by the Board or its designee that respondent may do so. Respondent shall not thereafter engage in any practice for which a license issued by the Board is required until the Board or its designee has notified respondent that he/she may resume practice. Respondent shall document compliance with this condition in the manner required by the Board.

(FYI: The Board requires that therapists have appropriate knowledge, training and experience in the area involved in the violation).

4. Clinical Diagnostic Evaluation

Standards #1,
2

Within twenty (20) days of the effective date of the Decision and at any time upon order of the Board, Respondent shall undergo a clinical diagnostic evaluation. Respondent shall provide the evaluator with a copy of the Board's Decision prior to the clinical diagnostic evaluation being performed.

Any time the Respondent is ordered to undergo a clinical diagnostic evaluation, his or her license or registration shall be automatically suspended for a minimum of one month pending the results of a clinical diagnostic evaluation. During such time, the Respondent shall submit to random drug testing at least two (2) times per week.

Respondent shall cause the evaluator to submit to the Board a written clinical diagnostic evaluation report within ten (10) days from the date the evaluation was completed, unless an extension, not to exceed thirty (30) days, is granted to the evaluator by the Board. Cost of such evaluation shall be paid by the Respondent.

Respondent's license or registration shall remain suspended until the Board determines that he or she is able to safely practice either full-time or part-time and has had at least one month of negative drug test results. Respondent shall comply with any restrictions or recommendations made by the Board as a result of the clinical diagnostic evaluation.

4.5. Supervised Practice

Within 30 days of the effective date of this decision, respondent shall submit to the Board or its designee, for its prior approval, the name and qualification of one or more proposed supervisors and a plan by each supervisor. The supervisor shall be a current California licensed practitioner in

respondent's field of practice, who shall submit written reports to the Board or its designee on a quarterly basis verifying that supervision has taken place as required and including an evaluation of respondent's performance. The supervisor shall be independent, with no prior business, professional or personal relationship with respondent.

If respondent is unable to secure a supervisor in his or her field of practice due to the unavailability of mental health care professionals in the area, then the Board may consider the following options for satisfying this probationary term:

- (1) Permitting the respondent to receive supervision via videoconferencing; or,
- (2) Permitting respondent to secure a supervisor not in the respondent's field of practice.

The forgoing options shall be considered and exhausted by the Board in the order listed above. The Board may require that respondent provide written documentation of his or her good faith attempts to secure face-to-face supervision, supervision via videoconferencing or to locate a mental health professional that is licensed in the respondent's field of practice.

Respondent shall complete any required consent forms and sign an agreement with the supervisor and the Board regarding the Respondent and the supervisor's requirements and reporting responsibilities. Failure to file the required reports in a timely fashion shall be a violation of probation. Respondent shall give the supervisor access to respondent's fiscal and client records. Supervision obtained from a probation supervisor shall not be used as experience gained toward licensure.

If the supervisor is no longer available, respondent shall notify the Board within 15 days and shall not practice until a new supervisor has been approved by the Board. All costs of the supervision shall be borne by respondent. Supervision shall consist of at least one (1) hour per week in individual face to face meetings. The supervisor shall not be the respondent's therapist.

[Optional - Respondent shall not practice until he/she has received notification that the Board has approved respondent's supervisor.]

5-6. Education

Respondent shall take and successfully complete the equivalency of ____ semester units in each of the following areas _____. All course work shall be taken at the graduate level at an accredited or approved educational institution that offers a qualifying degree for licensure as a marriage and family therapist, clinical social worker, educational psychologist, -or professional clinical counselor or through a course approved by the Board. Classroom attendance must be specifically required. Course content shall be pertinent to the violation and all course work must be completed within one year from the effective date of this Decision.

Within 90 days of the effective date of the decision respondent shall submit a plan for prior Board approval for meeting these educational requirements. All costs of the course work shall be paid by the respondent. Units obtained for an approved course shall not be used for continuing education units required for renewal of licensure.

(FYI: This term is appropriate when the violation is related to record keeping, which includes but is not limited to: recordkeeping, documentation, treatment planning, progress notes, -security of records, billing- and reporting requirements.)

6-7. Take and Pass Licensure Examinations

Respondent shall take and pass the licensure exam(s) currently required of new applicants for the license possessed by respondent. Respondent shall not practice until such time as respondent has taken and passed these examinations. Respondent shall pay the established examination fees. If respondent has not taken and passed the examination within twelve months from the effective date of this decision, respondent shall be considered to be in violation of probation.

7-8. Rehabilitation Program

Within fifteen (15) days from the effective date of the decision, respondent shall submit to the Board or its designee for prior approval the name of one or more rehabilitation program(s). Respondent shall enter a rehabilitation and monitoring program within fifteen (15) days after notification of the board's approval of such program. Respondent shall successfully complete such treatment contract as may be recommended by the program and approved by the Board or its designee. Respondent shall submit proof satisfactory to the Board or its designee of compliance with this term of probation. Respondent shall sign a release allowing the program to release to the Board all information the Board deems relevant.

Components of the treatment contract shall be relevant to the violation and to the respondent's current status in recovery or rehabilitation. The components may include, but are not limited to: restrictions on practice and work setting, random biological fluid drug and alcohol testing, abstention from drugs and alcohol, use of worksite monitors, participation in chemical dependency rehabilitation programs or groups, psychotherapy, counseling, psychiatric evaluations, and other appropriate rehabilitation or monitoring programs. All costs of participating in the program(s) shall be borne by the respondent.

8-9. Abstain from Controlled Substances / Submit to Biological Fluid Drug and Alcohol Testing and Samples

Respondent shall completely abstain from the use or possession of controlled or illegal substances unless lawfully prescribed by a medical practitioner for a bona fide illness.

Respondent shall immediately submit to random and directed biological drug and alcohol fluid testing, at respondent's cost, upon request by the Board or its designee. The Respondent shall be subject to a minimum number of random tests per year for the duration of the probationary term, as prescribed in the Uniform Standards Related to Substance Abuse. The length of time and frequency will be determined by the Board. Respondent is responsible for ensuring that reports are submitted directly by the testing agency to the Board or its designee. There will be no confidentiality in test results. Any confirmed positive finding will be immediately reported to the Respondent, the Respondent's current employer, and the supervisor, if any, and shall be a violation of probation.

If the Respondent tests positive for a controlled substance, Respondent's license or registration shall be automatically suspended. Respondent shall make daily contact as directed by the Board to determine if he or she must submit to drug testing. Respondent shall submit his or her drug test on the same day that he or she is notified that a test is required. All alternative drug testing sites due to vacation or travel outside of California must be approved by the Board prior to the vacation or travel.

9-10. Abstain from Use of Alcohol / Submit to Biological Fluid Drug and Alcohol Testing and Samples

Respondent shall completely abstain from the use intake of alcoholic ~~beverages~~ during the period of

probation.

Respondent shall immediately submit to random and directed biological fluid drug and alcohol testing, at respondent's cost, upon request by the Board or its designee. The Respondent shall be subject to a minimum number of random tests per year for the duration of the probationary term, as prescribed in the Uniform Standards Related to Substance Abuse. The length of time and frequency will be determined by the Board. The ~~r~~Respondent is responsible for ensuring that reports are submitted directly by the testing agency to the Board or its designee. There will be no confidentiality in test results. Any confirmed positive finding will be immediately reported to the Respondent, the ~~r~~Respondent's current employer, and the supervisor, if any, and shall be a violation of probation.

If the Respondent tests positive for a controlled substance, Respondent's license or registration shall be automatically suspended. Respondent shall make daily contact as directed by the Board to determine if he or she must submit to drug testing. Respondent shall submit his or her drug test on the same day that he or she is notified that a test is required. All alternative drug testing sites due to vacation or travel outside of California must be approved by the Board prior to the vacation or travel.

40-11. Restricted Practice

Respondent's practice shall be limited to _____. Within 30 days from the effective date of the decision, respondent shall submit to the Board or its designee, for prior approval, a plan to implement this restriction. Respondent shall submit proof satisfactory to the Board or its designee of compliance with this term of probation. Respondent shall notify their supervisor of the restrictions imposed on their practice.

44-12. Restitution

Within 90 days of the effective date of this decision, respondent shall provide proof to the Board or its designee of restitution in the amount of \$_____ paid to _____.

42-13. Reimbursement of Probation Program

Respondent shall reimburse the Board for the hourly costs it incurs in monitoring the probation to ensure compliance for the duration of the probation period. Reimbursement costs shall be \$_____ per year/\$_____ per month.

43-14. Physical Evaluation

Within 90 days of the effective date of this decision, and on a periodic basis thereafter as may be required by the Board or its designee, respondent shall complete a physical evaluation by such licensed physicians as are appointed by the Board. The cost of such evaluation shall be borne by respondent. Failure to pay for the report in a timely fashion constitutes a violation of probation.

Such physician shall furnish a written report to the Board or its designee regarding respondent's judgment and ability to function independently and safely as a therapist and such other information as the Board may require. Respondent shall execute a Release of Information authorizing the physician to release all information to the Board. Respondent shall comply with the recommendations of the physician.

If a physical evaluation indicates a need for medical treatment, within 30 days of notification by the Board, respondent shall submit to the Board or its designee the name and qualifications of the

medical provider, and a treatment plan by the medical provider by which the respondent's physical treatment will be provided.

If respondent is determined to be unable to practice independently and safely, upon notification, respondent shall immediately cease practice and shall resume practice until notified by the Board or its designee. Respondent shall not engage in any practice for which not a license issued by the Board is required, until the Board or its designee has notified the respondent of its determination that respondent may resume practice.

14.15. Monitor Billing System

Within 30 days of the effective date of this decision, respondent shall obtain the services of an independent billing system to monitor and document the dates and times of client visits. Clients are to sign documentation stating the dates and time of services rendered by respondent and no bills are to be issued unless there is a corresponding document signed by the client in support thereof. The billing system service shall submit quarterly written reports concerning respondent's cooperation with this system. The cost of the service shall be borne by respondent.

15.16. Monitor Billing System Audit

Within 60 days of the effective date of this decision, respondent shall provide to the Board or its designee the names and qualifications of three auditors. The Board or its designee shall select one of the three auditors to annually audit respondent's billings for compliance with the Billing System condition of probation. During said audit, randomly selected client billing records shall be reviewed in accordance with accepted auditing/accounting standards and practices. The cost of the audits shall be borne by respondent. Failure to pay for the audits in a timely fashion shall constitute a violation of probation.

16.17. Law and Ethics Course

Respondent shall take and successfully complete the equivalency of two semester units in law and ethics. Course work shall be taken at the graduate level at an accredited or approved educational institution that offers a qualifying degree for licensure as a marriage and family therapist, clinical social worker, educational psychologist, professional clinical counselor as defined in Sections 4980.40, 4996.18, 4999.32 or 4999.33 of the Business and Professions Codes and Section 1854 of Title 16 of the California Code of Regulations or through a course approved by the Board. Classroom attendance must be specifically required. Within 90 days of the effective date of this Decision, respondent shall submit a plan for prior Board approval for meeting this educational requirement. Said course must be taken and completed within one year from the effective date of this Decision. The costs associated with the law and ethics course shall be paid by the respondent. Units obtained for an approved course in law and ethics shall not be used for continuing education units required for renewal of licensure.

(FYI: This term is appropriate when the licensee fails to keep informed about or comprehend the legal obligations and/or ethical responsibilities applicable to their actions. Examples include violations involving boundary issues, transference/countertransference, breach of confidentiality and reporting requirements.)

Standard Terms and Conditions of Probation

The sixteen standard terms and conditions generally appearing in every probation case are as follows:

- ~~17.18.~~ Obey All Laws
- ~~18.19.~~ File Quarterly Reports
- ~~19.20.~~ Comply with Probation Program
- ~~20.21.~~ Interviews with the Board
- ~~21.22.~~ Residing or Practicing Out-of-State
- ~~22.23.~~ Failure to Practice- California Resident
- ~~23.24.~~ Change of Place of Employment or Place of Residence
- ~~24.25.~~ Supervision of Unlicensed Persons
- ~~25.26.~~ Notification to Clients
- ~~26.27.~~ Notification to Employer
- ~~27.28.~~ Violation of Probation
- ~~28.29.~~ Maintain Valid License
- ~~29.30.~~ License Surrender
- ~~30.31.~~ Instruction of Coursework Qualifying for Continuing Education
- ~~31.32.~~ Notification to Referral Services
- ~~32.33.~~ Cost Recovery

Specific Language for Standard Terms and Conditions of Probation

(To be included in all Decisions)

17.18. Obey All Laws

Respondent shall obey all federal, state and local laws, all statutes and regulations governing the licensee, and remain in full compliance with any court ordered criminal probation, payments and other orders. A full and detailed account of any and all violations of law shall be reported by the respondent to the Board or its designee in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this term, respondent shall submit fingerprints through the Department of Justice and Federal Bureau of Investigation within 30 days of the effective date of the decision, unless previously submitted as part of the licensure application process. Respondent shall pay the cost associated with the fingerprint process.

18.19. File Quarterly Reports

Respondent shall submit quarterly reports, to the Board or its designee, as scheduled on the "Quarterly Report Form" (rev. 01/12/01). Respondent shall state under penalty of perjury whether he/she has been in compliance with all the conditions of probation. Notwithstanding any provision for tolling of requirements of probation, during the cessation of practice respondent shall continue to submit quarterly reports under penalty of perjury.

19.20. Comply with Probation Program

Respondent shall comply with the probation program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of the respondent's compliance with the program.

20-21. Interviews with the Board

Respondent shall appear in person for interviews with the Board or its designee upon request at various intervals and with reasonable notice.

21-22. Residing or Practicing Out-of-State

In the event respondent should leave the State of California to reside or to practice, respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return. Non-practice is defined as any period of time exceeding thirty calendar days in which respondent is not engaging in any activities defined in Sections 4980.02, 4989.14, 4996.9, or 4999.20 of the Business and Professions Code.

All time spent in an intensive training program outside the State of California which has been approved by the Board or its designee shall be considered as time spent in practice within the State. A Board-ordered suspension of practice shall not be considered as a period of non-practice. Periods of temporary or permanent residence or practice outside California will not apply to the reduction of the probationary term. Periods of temporary or permanent residence or practice outside California will relieve respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; Probation Unit Compliance; and Cost Recovery.

Respondent's license shall be automatically cancelled if respondent's periods of temporary or permanent residence or practice outside California total two years. However, respondent's license shall not be cancelled as long as respondent is residing and practicing in another state of the United States and is on active probation with the licensing authority of that state, in which case the two year period shall begin on the date probation is completed or terminated in that state.

(OPTIONAL)

Any respondent disciplined under Business and Professions Code Sections 141(a), 4982.25, 4992.36, 4989.54(h), 4989.54(i), or 4990.38 (another state discipline) may petition for modification or termination of penalty: 1) if the other state's discipline terms are modified, terminated or reduced; and 2) if at least one year has elapsed from the effective date of the California discipline.

22-23. Failure to Practice- California Resident

In the event respondent resides in the State of California and for any reason respondent stops practicing in California, respondent shall notify the Board or its designee in writing within 30 calendar days prior to the dates of non-practice and return to practice. Any period of non-practice within California, as defined in this condition, will not apply to the reduction of the probationary term and does not relieve respondent of the responsibility to comply with the terms and conditions of probation. Non-practice is defined as any period of time exceeding thirty calendar days in which respondent is not engaging in any activities defined in Sections 4980.02, 4989.14, 4996.9, or 4999.20 of the Business and Professions Code.

23- 24. Change of Place of Employment or Place of Residence

Respondent shall notify the Board or its designee in writing within 30 days of any change of place of employment or place of residence. The written notice shall include the address, the telephone number and the date of the change.

24-25. Supervision of Unlicensed Persons

While on probation, respondent shall not act as a supervisor for any hours of supervised practice required for any license issued by the Board. Respondent shall terminate any such supervisorial relationship in existence on the effective date of this Decision.

25-26. Notification to Clients

Respondent shall notify all clients when any term or condition of probation will affect their therapy or the confidentiality of their records, including but not limited to supervised practice, suspension, or client population restriction. Such notification shall be signed by each client prior to continuing or commencing treatment. Respondent shall submit, upon request by the Board or its designee, satisfactory evidence of compliance with this term of probation.

(FYI: Respondents should seek guidance from Board staff regarding appropriate application of this condition).

26-27. Notification to Employer

Respondent shall provide each of his or her current or future employers, when performing services that fall within the scope of practice of his or her license, a copy of this Decision and the Statement of Issues or Accusation before commencing employment. Notification to the respondent's current employer shall occur no later than the effective date of the Decision or immediately upon commencing employment. Respondent shall submit, upon request by the Board or its designee, satisfactory evidence of compliance with this term of probation.

Standard
#3

The Respondent shall provide to the Board the names, physical addresses, and telephone numbers of all employers, supervisors, and contractors.

Respondent shall complete the required consent forms and sign an agreement with the employer and supervisor, or contractor, and the Board to allow the Board to communicate with the employer and supervisor or contractor regarding the licensee or registrant's work status, performance, and monitoring.

27-28. Violation of Probation

If respondent violates the conditions of his/her probation, the Board, after giving respondent notice and the opportunity to be heard, may set aside the stay order and impose the discipline (revocation/suspension) of respondent's license [or registration] provided in the decision.

If during the period of probation, an accusation, petition to revoke probation, or statement of issues has been filed against respondent's license [or registration] or application for licensure, or the

Attorney General's office has been requested to prepare such an accusation, petition to revoke probation, or statement of issues, the probation period set forth in this decision shall be automatically extended and shall not expire until the accusation, petition to revoke probation, or statement of issues has been acted upon by the board. Upon successful completion of probation, respondent's license [or registration] shall be fully restored.

28-29. Maintain Valid License

Respondent shall, at all times while on probation, maintain a current and active license with the Board, including any period during which suspension or probation is tolled. Should respondent's license, by operation of law or otherwise, expire, upon renewal respondent's license shall be subject to any and all terms of this probation not previously satisfied.

29-30. License Surrender

Following the effective date of this decision, if respondent ceases practicing due to retirement or health reasons, or is otherwise unable to satisfy the terms and conditions of probation, respondent may voluntarily request the surrender of his/her license to the Board. The Board reserves the right to evaluate the respondent's request and to exercise its discretion whether to grant the request or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, respondent shall within 30 calendar days deliver respondent's license and certificate and if applicable wall certificate to the Board or its designee and respondent shall no longer engage in any practice for which a license is required. Upon formal acceptance of the tendered license, respondent will no longer be subject to the terms and conditions of probation.

Voluntary surrender of respondent's license shall be considered to be a disciplinary action and shall become a part of respondent's license history with the Board. Respondent may not petition the Board for reinstatement of the surrendered license. Should respondent at any time after voluntary surrender ever reapply to the Board for licensure respondent must meet all current requirements for licensure including, but not limited to, filing a current application, meeting all current educational requirements, and taking and passing any and all examinations required of new applicants.

30-31. Instruction of Coursework Qualifying for Continuing Education

Respondent shall not be an instructor of any coursework for continuing education credit required by any license issued by the Board.

31-32. Notification to Referral Services

Respondent shall immediately send a copy of this decision to all referral services registered with the Board in which respondent is a participant. While on probation, respondent shall send a copy of this decision to all referral services registered with the Board that respondent seeks to join.

32-33. Cost Recovery

Respondent shall pay the Board \$_____ as and for the reasonable costs of the investigation and prosecution of Case No. _____. Respondent shall make such payments as follows: [Outline payment schedule.] Respondent shall make the check or money order payable to the

Board of Behavioral Sciences and shall indicate on the check or money order that it is the cost recovery payment for Case No. _____. Any order for payment of cost recovery shall remain in effect whether or not probation is tolled. Probation shall not terminate until full payment has been made. Should any part of cost recovery not be paid in accordance with the outlined payment schedule, respondent shall be considered to be in violation of probation. A period of non-practice by respondent shall not relieve respondent of his or her obligation to reimburse the board for its costs.

Cost recovery must be completed six months prior to the termination of probation. A payment plan authorized by the Board may be extended at the discretion of the Enforcement Manager based on good cause shown by the probationer.

IV. BOARD POLICIES AND GUIDELINES

Accusations

The Board of Behavioral Sciences (Board) has the authority pursuant to Section 125.3 of the Business and Professions Code to recover costs of investigation and prosecution of its cases. The Board requests that this fact be included in the pleading and made part of the accusation.

Statement of Issues

The Board will file a Statement of Issues to deny an application of a candidate for the commission of an act, which if committed by a licensee would be cause for license discipline.

Stipulated Settlements

The Board will consider entering into stipulated settlements to promote cost effective consumer protection and to expedite disciplinary decisions. The respondent should be informed that in order to stipulate to settlement with the Board, he or she may be required to admit to the violations set forth in the Accusation. The Deputy Attorney General must accompany all proposed stipulations submitted with a memo addressed to Board members explaining the background of the case, defining the allegations, mitigating circumstances, admissions, and proposed penalty along with a recommendation.

Recommended Language for License Surrenders

"Admission(s) made in the stipulation are made solely for the purpose of resolving the charges in the pending accusation, and may not be used in any other legal proceedings, actions or forms, except as provided in the stipulation.

The admissions made in this stipulation shall have no legal effect in whole or in part if the Board does not adopt the stipulation as its decision and order.

Contingency

This stipulation shall be subject to approval by the Board of Behavioral Sciences. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Behavioral Sciences may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his/her counsel. By signing the stipulation, Respondent understands and agrees that he/she may not withdraw his/her agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

Respondent fully understands that when the Board adopts the license surrender of respondent's license, respondent will no longer be permitted to practice as a _____ in California. Respondent further understands that the license surrender of his or her license, upon adoption, shall be considered to be a disciplinary action and shall become a part of respondent's license history with the Board.

The respondent further agrees that with the adoption by the Board of his or her license surrender, respondent may not petition the Board for reinstatement of the surrendered license.

Respondent may reapply to the Board for licensure three years from the date of surrender and must meet all current requirements for licensure including, but not limited to, filing a current application, meeting all current educational requirements, and taking and passing any and all examinations required of new applicants.

Respondent understands that should he or she ever reapply for licensure as a _____ or should he or she ever apply for any other registration or licensure issued by the Board, or by the Board of Psychology, all of the charges contained in Accusation No. _____ shall be deemed admitted for the purpose of any Statement of Issues or other proceeding seeking to deny such application or reapplication."

Recommended Language for Registration Applicants

IT IS HEREBY ORDERED THAT Respondent _____ be issued a Registration as a _____. Said Registration shall be revoked. The revocation will be stayed and Respondent placed on _____ years probation with the following terms and conditions. Probation shall continue on the same terms and conditions if Respondent is issued a subsequent registration or becomes licensed during the probationary period.

Recommended Language for Registrants

IT IS HEREBY ORDERED THAT _____ Registration Number _____ issued to Respondent _____ is revoked. The revocation will be stayed and respondent placed on _____ years probation with the following terms and conditions. Probation shall continue on the same terms and conditions if Respondent is issued a subsequent registration or becomes licensed during the probationary period.

Proposed Decisions

The Board requests that proposed decisions include the following if applicable:

- A. Names and addresses of all parties to the action.
- B. Specific Code section violated with the definition of the code in the Determination of Issues.
- C. Clear description of the acts or omissions that constitute a violation.
- D. Respondent's explanation of the violation in the Findings of fact if he or she is present at the hearing.
- E. Explanation for deviation from the Board's Disciplinary Guidelines.

When a probation order is imposed, the Board requests that the Order first list the Optional Terms and Conditions (~~4-461-18~~) followed by the Standard Terms and Conditions (~~47-2219-34~~) as they may pertain to the particular case. If the respondent fails to appear for his or her scheduled hearing or does not submit a notice of defense, such inaction shall result in a default decision to revoke licensure or deny application.

Reinstatement / Reduction of Penalty Hearings

The primary concerns of the Board at reinstatement or penalty relief hearings are (1) the Rehabilitation Criteria for Suspensions or Revocations identified in Title 16, California Code of Regulations Section 1814, and (2) the evidence presented by the petitioner of his or her rehabilitation. The Board is not interested in retrying the original revocation or probation case. The Board shall consider, pursuant to Section 1814, the following criteria of rehabilitation:

- (1) Nature and severity of the act(s) or crime(s) under consideration as grounds for suspension or revocation.
- (2) Evidence of any acts committed subsequent to the acts or crimes under consideration as grounds for suspension or revocation under Section 490 of the Code.
- (3) The time that has elapsed since commission of the acts or crimes giving rise to the suspension or revocation.
- (4) Whether the licensee has complied with any terms of probation, parole, restitution, or any other sanctions lawfully imposed against such person.
- (5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.
- (6) Evidence, if any, concerning the degree to which a false statement relative to application for licensure may have been unintentional, inadvertent, or immaterial.
- (7) Efforts made by the applicant either to correct a false statement once made on an application

or to conceal the truth concerning facts required to be disclosed.

- (8) Evidence, if any, of rehabilitation submitted by the licensee.

In the Petition Decision the Board requires a summary of the offense and the specific codes violated which resulted in the revocation, surrender, or probation of the license.

In petitioning for Reinstatement or Reduction of Penalty under Business and Professions Code Section 4982.2, the petitioner has the burden of demonstrating that he or she has the necessary and current qualifications and skills to safely engage in the practice of marriage and family therapy, clinical social work, educational psychology, or professional clinical counselor within the scope of current law, and accepted standards of practice. In reaching its determination, the Board considers various factors including the following:

- A. The original violations for which action was taken against the petitioner's license;
- B. Prior disciplinary and criminal actions taken against the petitioner by the Board, any State, local, or Federal agency or court;
- C. The petitioner's attitude toward his or her commission of the original violations and his or her attitude in regard to compliance with legal sanctions and rehabilitative efforts;
- D. The petitioner's documented rehabilitative efforts;
- E. Assessment of the petitioner's rehabilitative and corrective efforts;
- F. In addition, the Board may consider other appropriate and relevant matters not reflected above.

If the Board should deny a request for reinstatement of a revoked license or reduction of penalty (modification or termination of probation), the Board requests the Administrative Law Judge provide

technical assistance in the formulation of language clearly setting forth the reasons for denial.

If a petitioner fails to appear for his or her scheduled reinstatement or penalty relief hearing, such proceeding shall go forth without the petitioner's presence and the Board will issue a decision based on the written evidence and oral presentations submitted.

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Memorandum

To : Doreathea Johnson
Deputy Director & Chief Counsel
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Legal Affairs Division

Date: February 29, 2012
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From : Kathleen A. Lynch
Deputy Attorney General
Government Law Section
Office of the Attorney General – Sacramento

Subject : Uniform Standards Related to Substance-Abusing Licensees (Bus. & Prof. Code,
§§ 315 - 315.4)

Executive Summary

Issues

You asked us to review Legislative Counsel's letter of October 27, 2011, which rendered certain opinions regarding the Substance Abuse Coordination Committee (SACC), which was created by Business and Professions Code section 315 to formulate uniform standards for use by the healing arts boards to deal with substance-abusing licensees. Legislative Counsel opined that:

- (1) SACC was required to formally promulgate the uniform standards as regulations pursuant to the Administrative Procedures Act (APA), and
- (2) the healing arts boards are required to use such standards under Business and Professions Code sections 315.

Summary of Responses

With respect to question (1), we see things differently from Legislative Counsel, in two respects.

First, we believe that SACC's adoption of uniform standards does not need to undergo the formal rule-making process under the APA. While other laws could potentially require the adoption of regulations when the standards are implemented by the boards (such as statutes governing particular boards or the APA's provisions applicable to disciplinary proceedings), we disagree that section 315 itself triggers the need to issue the uniform standards as regulations.

Second, even assuming the uniform standards must be adopted as regulations, we disagree with Legislative Counsel's apparent assumption that SACC would issue the regulations under section 315. The legislative histories of the relevant laws and statutory authorities of the

individual boards indicate that the boards would issue the regulations to implement the uniform standards.

As to question (2), we agree with Legislative Counsel that the healing arts boards must use the uniform standards under sections 315. A board cannot simply disregard a specific standard because it does not like the standard or because it believes that the standard is too cumbersome. However, some specific uniform standards themselves recognize a board's discretion whether to order a particular action in the first place. Thus, boards still retain authority to determine if they will undertake certain types of actions if permitted under a specific uniform standard.

Statutory Background

In 2008, SACC was legislatively established within the Department of Consumer Affairs to create uniform standards to be used by the healing arts boards when addressing licensees with substance abuse problems. (Bus. & Prof. Code, § 315, subd. (a); Stats. 2008, ch. 548 (SB 1441).) By January 1, 2010, SACC was required to "formulate uniform and specific standards" in 16 identified areas "that each healing arts board shall use in dealing with substance-abusing licensees, whether or not a board chooses to have a formal diversion program." (*Id.* at § 315, subd. (c).) These 16 standards include requirements for: clinical diagnostic evaluation of licensees; the temporary removal of the licensee from practice for clinical diagnostic evaluation and any treatment, and criteria before being permitted to return to practice on a full-time or part-time basis; aspects of drug testing; whether inpatient, outpatient, or other type of treatment is necessary; worksite monitoring requirements and standards; consequences for major and minor violations; and criteria for a licensee to return to practice and petition for reinstatement of a full and unrestricted license. (*Ibid.*) SACC meetings to create these standards are subject to Bagley-Keene Act open meeting requirements. (*Id.* at subd. (b).)

On March 3, 2009, SACC conducted its first public hearing, which included a discussion of an overview of the diversion programs, the importance of addressing substance abuse issues for health care professionals, and the impact of allowing health care professionals who are impaired to continue to practice. (Sen. Com. on Business, Professions, and Economic Development, Analysis of SB 1172 (2010-2011 Reg. Sess.), as amended April 12, 2010.) During this meeting, SACC members agreed to draft uniform guidelines for each of the standards, and during subsequent meetings, roundtable discussions were held on the draft uniform standards, including public comments. (*Ibid.*) In December 2009, the Department of Consumer Affairs adopted the uniform guidelines for each of the standards required by SB 1441. (*Ibid.*) These standards have subsequently been amended by SACC, and the current standards were issued in April of 2011.

According to the author of SB 1441 (Ridley-Thomas), the intent of the legislation was to protect the public by ensuring that, at a minimum, a set of best practices or standards were adopted by health-care-related boards to deal with practitioners with alcohol or drug problems. (Assem. Com. on Business and Professions, Analysis of SB 1441 (2008-2009 Reg. Sess.), as amended June 16, 2008.) The legislation was also meant to ensure uniformity among the

standards established throughout the healing arts licensing boards under the Department of Consumer Affairs. (*Ibid.*) Specifically, the author explains:

SB 1441 is not attempting to dictate to [the health-related boards] how to run their diversion programs, but instead sets parameters for these boards. The following is true to all of these boards' diversion programs: licensees suffer from alcohol or drug abuse problems, there is a potential threat to allowing licensees with substance abuse problems to continue to practice, actual harm is possible and, sadly, has happened. The failures of the Medical Board of California's (MBC) diversion program prove that there must be consistency when dealing with drug or alcohol issues of licensees.

(Assem. Com. on Business and Professions, Analysis of SB 1441 (2008-2009 Reg. Sess.), as amended June 16, 2008.)

In the view of its author, "[t]his bill allows the boards to continue a measure of self-governance; the standards for dealing with substance-abusing licensees determined by the commission set a floor, and boards are permitted to establish regulations above these levels." (*Ibid.*)

In 2010, additional legislation was enacted to further implement section 315. Specifically, it provided that the healing arts boards, as described in section 315 and with the exception of the Board of Registered Nursing, "may adopt regulations authorizing the board to order a licensee on probation or in a diversion program to cease practice for major violations and when the board orders a licensee to undergo a clinical diagnostic evaluation pursuant to the uniform and specific standards adopted and authorized under Section 315." (Bus. & Prof. Code, § 315.4, subd. (a); Stats. 2010, ch. 517 (SB 1172).) An order to cease practice does not require a formal hearing and does not constitute a disciplinary action. (*Id.* § 315.4 subds. (b), (c).)

According to the author of SB 1172 (Negrete McLoud), this subsequent statute was necessary "because current law does not give boards the authority to order a cease practice." (Sen. Com. on Business, Professions, and Economic Development, Analysis of SB 1172 (2010-2011 Reg. Sess.), as amended April 12, 2010.) The author explains:

Although most of the adopted guidelines do not need additional statutes for implementation, there are a few changes that must be statutorily adopted to fully implement these standards. [¶] This bill seeks to provide the statutory authority to allow boards to order a licensee to cease practice if the licensee tests positive for any substance that is prohibited under the terms of the licensee's probation or diversion program, if a major violation is committed and while undergoing clinical diagnostic evaluation. [¶] The ability of a board to order a licensee to cease practice under these circumstances provides a delicate balance to the inherent confidentiality of diversion programs. The protection of the public remains the top priority of boards when dealing with substance abusing licensees.

(Senate Third Reading, Analysis of SB 1172 (2010-2011 Reg. Sess.); as amended June 22, 2010.)

Legal Analysis

1a. Section 315 should be construed as not requiring that the uniform standards be adopted as regulations.

Legislative Counsel opined that SACC must adopt the uniform standards as regulations under section 315, because (1) the standards meet the definition of regulations, (2) none of the express exemptions under Government Code section 11340.9 remove them from the APA rule-making process, and (3) section 315 contains no express language precluding application of the rulemaking provisions of the APA. (October 27, 2011 Letter, p. 5.) We have a different view on the threshold issue of whether the standards qualify as a regulation under section 315.

Under the APA, a regulation is defined as "every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure." (Gov. Code, § 11342.600.) "No state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation as defined in Section 11342.600, unless [it has been adopted in compliance with the APA]." (*Id.* § 11340.5, subd. (a).) This requirement cannot be superseded or modified by subsequent legislation, unless the statute does so expressly. (*Id.* § 11346, subd. (a).)

An agency standard subject to the APA has two identifying characteristics. First, the agency must intend its rule to apply generally, rather than in a specific case. Second, the rule must "implement, interpret, or make specific the law enforced or administered by [the agency], or . . . govern [the agency's] procedure." (*Morning Star Co. v. State Bd. of Equalization* (2006) 38

Cal.4th 324, 333, quoting *Tidewater Marine Western, Inc. et al. v. Bradshaw* (1996) 14 Cal.4th 557, 571.)

Whether a particular standard or rule is a regulation requiring APA compliance depends on the facts of each case, considering the rule in question, and the applicable statutory scheme. Generally speaking, courts tend to readily find the need for such compliance. We understand that certain healing arts boards have already adopted regulations incorporating the uniform standards. (See, e.g., Cal. Code Regs., tit. 16, § 4147 [Board of Occupational Therapy].) This approach is understandable in light of the usually broad requirement that agency rules be adopted as regulations and, as noted below, may be required by other laws when they are implemented by the boards. Here, however, the wording and intent of section 315 indicate the Legislature did not intend that the initial act of formulating and adopting the uniform standards is within the purview of the formal APA rule-making process.

“The fundamental rule of statutory construction is that the court should ascertain the intent of the Legislature so as to effectuate the purpose of the law.” (*Bodell Const. Co. v. Trustees of California State University* (1998) 62 Cal.App.4th 1508, 1515.) In determining that intent, courts “first examine the words of the statute itself. Under the so-called ‘plain meaning’ rule, courts seek to give the words employed by the Legislature their usual and ordinary meaning. If the language of the statute is clear and unambiguous, there is no need for construction. However, the ‘plain meaning’ rule does not prohibit a court from determining whether the literal meaning of a statute comports with its purpose. If the terms of the statute provide no definitive answer, then courts may resort to extrinsic sources, including the ostensible objects to be achieved and the legislative history.” (*Ibid.* [citations omitted].) Courts “must select the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, and avoid an interpretation that would lead to absurd consequences.” (*Ibid.* [citation omitted].) “The legislative purpose will not be sacrificed to a literal construction of any part of the statute.” (*Ibid.*)

In *Paleski v. State Department of Health Services* (2006) 144 Cal.App.4th 713, the Court of Appeal applied these rules of statutory construction and found that the challenged agency criteria were not required to be adopted as regulations under the APA. (*Id.* at pp. 728-729.) In *Paleski*, plaintiff challenged an agency’s criteria for the prescription of certain drugs because the department had not promulgated them in compliance with the APA. (*Ibid.*) The statute, however, expressly authorized the criteria to be effectuated by publishing them in a manual. (*Ibid.*) According to the court, the “necessary effect” of this language was that the Legislature did not intend for the broader notice procedure of the APA to apply when the agency issued the criteria. (*Ibid.*)

Similar reasoning should apply here. Under the plain meaning of section 315, SACC was legislatively established to create uniform standards to be used by the healing arts boards when addressing licensees with substance abuse problems. (Bus. & Prof. Code, § 315, subd. (a).) The intent of the legislation was to protect the public and to ensure that minimum standards are met and to ensure uniformity among the standards established throughout the healing arts

licensing boards under the Department of Consumer affairs. (Assem. Com. on Business and Professions, Analysis of SB 1441 (2008-2009 Reg. Sess.), as amended June 16, 2008.) In formulating these uniform standards, SACC was subject to the Bagley-Keene Act, which requires noticed public meetings. Many roundtable discussions were held on the draft uniform standards, including public vetting and public comments. In that way, the affected community learned about the standards and had the opportunity to comment. This is a prime requirement and purpose of the APA rule-making process (see Gov. Code, § 11343 *et seq.*), but it has already been fulfilled by the procedures set forth in section 315. To now require SACC to repeat that process by promulgating the standards as regulations would make little sense and be duplicative.

Nor does the process for the formulation of the standards set forth in section 315 comport with the other purposes and procedures of the APA. During the APA rule-making process, an agency must provide various reasons, justifications, analyses, and supporting evidence for the proposed regulation. (Gov. Code, § 11346.2.) Those provisions and other provisions of the APA are intended to address the proliferation, content, and effect of regulations proposed by administrative agencies. (*Id.* §§ 11340, 11340.1.) Here, the agency is not proposing to adopt the uniform standards. The Legislature has required that the standards adopted by SACC, be uniform, and be used by the boards. Given this statutory mandate that they be implemented, subjecting the uniform standards to substantive review under the APA again makes little sense.¹

1b. The SACC would not be the rule-making entity, even if the uniform standards would have to be adopted as regulations.

Even assuming that APA compliance was required under section 315, it is doubtful that SACC would carry the responsibility to adopt regulations. The second component of a regulation requires that the rule must “implement, interpret, or make specific the law enforced or administered by [the agency], or . . . govern [the agency’s] procedure.” (*Morning Star Co.*, *supra*, 38 Cal.4th at p. 333.) Here, SACC was mandated to create the uniform standards to be used by separate boards; the SACC’s creation of the uniform standards does not implement,

¹ Even though the standards do not have to be promulgated as regulations by SACC under section 315, this does not mean that certain regulations would not arguably be required on the part of some or all of the boards under other statutory schemes, such as the laws applicable to a particular board or the APA’s provisions on quasi-adjudicatory proceedings. This type of analysis would require a fact specific, case-by-case study of each board’s practices and its regulatory scheme and may include consideration of: (1) whether a board’s statutory authority requires the adoption of regulations related to actions against substance-abusing licensees, (2) whether current regulations conflict with the standards, and (3) whether in an administrative adjudicative setting, the standards are considered “penalties” and thus must be adopted as regulations under section 11425.50, subdivision (e), of the Government Code.

interpret, or make any law more specific. (Bus. & Prof. Code, § 315, subds. (a), (c).) The only express statutory role of the SACC is to determine the uniform standards in the first place.²

The boards are then required to use and apply the standards and have much clearer authority to adopt regulations. “Each of the boards [within the Department of Consumer Affairs] exists as a separate unit, and has the function of setting standards, holding meetings, and setting dates thereof, preparing and conducting examinations, passing upon applicants, conducting investigations of violations of laws under its jurisdiction, issuing citations and hold hearings for the revocation of licenses, and the imposing of penalties following such hearings, in so far as these powers are given by statute to each respective board.” (Bus. & Prof. Code, § 108.)

The legislative history for section 315 also supports this conclusion. According to its author, section 315 was adopted to protect the public by ensuring that, at a minimum, a set of best practices or standards *were adopted by health care related boards to deal with practitioners with alcohol or drug problems*. (Assem. Com. on Business and Professions, Analysis of SB 1441 (2008-2009 Reg. Sess.), as amended June 16, 2008, emphasis added.)³ Practically speaking, it would be difficult for the SACC (or the Department of Consumer Affairs) to draft regulations applicable to all boards, given that they are unique and deal with different subject areas, unless such regulations were adopted wholesale, on a one-size-fits-all basis. As explained below, while the healing arts boards must use the standards, they only have to use the ones that apply to their procedures.

Thus, while section 315 does not require regulations to initially adopt the standards, the boards (and not SACC) would more reasonably be tasked with this responsibility.

2. The healing arts boards must use the uniform standards to the extent that they apply.

The original language of section 315 is clear that the standards must be used. (Bus. & Prof. Code, § 315, subd. (a) [“uniform standards that will be used by healing arts boards”], subd. (b) [“uniform standards . . . that each healing arts board shall use in dealing with substance-abusing licenses”].) Legislative Counsel was asked to opine on whether subsequent legislation (Bus. & Prof. Code, § 315.4) somehow made these uniform standards discretionary. We agree with

² The SACC is a committee formed by various executive officers of healing arts boards and other public officials formed within the Department of Consumer Affairs. (Bus. & Prof. Code, § 315, subds. (a).)

³ As discussed shortly, the legislative history for follow-up legislation similarly explains that its purpose was to provide statutory authority for some healing arts boards to issue regulations to implement certain of the uniform standards. (Sen. Com. on Business, Professions, and Economic Development, Analysis of SB 1172 (2010-2011 Reg. Sess.), as amended April 12, 2010.)

Legislative Counsel's conclusion that section 315.4 did not make the uniform standards optional. (Oct. 27, 2011, Letter, p. 9.)

Section 315.4 was enacted two years after section 315, and provides that that the healing arts boards, as described in section 315 and with the exception of the Board of Registered Nursing, "may adopt regulations authorizing the board to order a licensee on probation or in a diversion program to cease practice for major violations and when the board orders a licensee to undergo a clinical diagnostic evaluation pursuant to the uniform and specific standards adopted and authorized under Section 315." (Bus. & Prof. Code, § 315.4, subd. (a); Stats. 2010, ch. 517, (SB 1172).) If a board adopts such regulations, there is nothing to indicate that use of uniform standards created under section 315 is optional. Such an interpretation would be contrary to the legislative intent. Section 314.5 was enacted for the limited purpose to give boards the authority to order a licensee to cease practice, as this was not provided for in section 315. (Sen. Com. on Business, Professions, and Economic Development, Analysis of SB 1172 (2010-2011 Reg. Sess.), as amended April 12, 2010.) By no means was the intent to transform the mandatory uniform standards of section 315 into optional suggestions. As the author explains:

Although most of the adopted guidelines do not need additional statutes for implementation, there are a few changes that must be statutorily adopted to fully implement these standards. [¶] This bill seeks to provide the statutory authority to allow boards to order a licensee to cease practice if the licensee tests positive for any substance that is prohibited under the terms of the licensee's probation or diversion program, if a major violation is committed and while undergoing clinical diagnostic evaluation.

(Senate Third Reading, Analysis of SB 1172 (2010-2011 Reg. Sess.), as amended June 22, 2010.)

In addition, some specific uniform standards themselves recognize a board's discretion whether to order a particular action in the first place. (See e.g. Uniform Standard # 1 ["If a healing arts board orders a licensee . . . to undergo a clinical diagnosis evaluation, the following applies: . . . ".]) The standards must be applied, however, if a board undertakes a particular practice or orders an action covered by the standards. A determination regarding a board's specific application (or not) of certain uniform standards would have to be based on a fact specific, case-by-case review of each board and its regulatory scheme. However, once a board implements a procedure covered by the uniform standards, it cannot disregard the applicable uniform standard because it disagrees with the standard's substance.

Conclusion

For the reasons stated above, in our view, section 315 can be read to preclude the necessity to adopt regulations when the uniform standards are issued initially. And even if regulations were required under section 315, SACC would not be tasked with this responsibility. We also

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Doreathea Johnson
February 29, 2012
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believe that the healing arts boards must use the uniform standards where an agency undertakes an action covered by the standards.

Please feel free to contact me if you have any questions or would like to discuss the above.

:KAL

cc: Peter K. Southworth, Supervising Deputy Attorney General

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"(b) The committee shall be subject to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Division 3 of Title 2 of the Government Code).

"(c) By January 1, 2010, the committee shall formulate uniform and specific standards in each of the following areas that each healing arts board shall use in dealing with substance-abusing licensees, whether or not a board chooses to have a formal diversion program:

"(1) Specific requirements for a clinical diagnostic evaluation of the licensee, including, but not limited to, required qualifications for the providers evaluating the licensee.

"(2) Specific requirements for the temporary removal of the licensee from practice, in order to enable the licensee to undergo the clinical diagnostic evaluation described in paragraph (1) and any treatment recommended by the evaluator described in paragraph (1) and approved by the board, and specific criteria that the licensee must meet before being permitted to return to practice on a full-time or part-time basis.

"(3) Specific requirements that govern the ability of the licensing board to communicate with the licensee's employer about the licensee's status and condition.

"(4) Standards governing all aspects of required testing, including, but not limited to, frequency of testing, randomness, method of notice to the licensee, number of hours between the provision of notice and the test, standards for specimen collectors, procedures used by specimen collectors, the permissible locations of testing, whether the collection process must be observed by the collector, backup testing requirements when the licensee is on vacation or otherwise unavailable for local testing, requirements for the laboratory that analyzes the specimens, and the required maximum timeframe from the test to the receipt of the result of the test.

"(5) Standards governing all aspects of group meeting attendance requirements, including, but not limited to, required qualifications for group meeting facilitators, frequency of required meeting attendance, and methods of documenting and reporting attendance or nonattendance by licensees.

"(6) Standards used in determining whether inpatient, outpatient, or other type of treatment is necessary.

"(7) Worksite monitoring requirements and standards, including, but not limited to, required qualifications of worksite monitors, required methods of monitoring by worksite monitors, and required reporting by worksite monitors.

"(8) Procedures to be followed when a licensee tests positive for a banned substance.

"(9) Procedures to be followed when a licensee is confirmed to have ingested a banned substance.

"(10) Specific consequences for major violations and minor violations. In particular, the committee shall consider the use of a deferred prosecution stipulation similar to the stipulation described in Section 1000 of the Penal Code, in which the licensee admits to self-abuse of drugs or alcohol and surrenders his or her license. That agreement is deferred by the agency unless or until the licensee commits a major violation, in which case it is revived and the license is surrendered.

"(11) Criteria that a licensee must meet in order to petition for return to practice on a full-time basis.

"(12) Criteria that a licensee must meet in order to petition for reinstatement of a full and unrestricted license.

"(13) If a board uses a private-sector vendor that provides diversion services, standards for immediate reporting by the vendor to the board of any and all noncompliance with any term of the diversion contract or probation; standards for the vendor's approval process for providers or contractors that provide diversion services, including, but not limited to, specimen collectors, group meeting facilitators, and worksite monitors; standards requiring the vendor to disapprove and discontinue the use of providers or contractors that fail to provide effective or timely diversion services; and standards for a licensee's termination from the program and referral to enforcement.

"(14) If a board uses a private-sector vendor that provides diversion services, the extent to which licensee participation in that program shall be kept confidential from the public.

"(15) If a board uses a private-sector vendor that provides diversion services, a schedule for external independent audits of the vendor's performance in adhering to the standards adopted by the committee.

"(16) Measurable criteria and standards to determine whether each board's method of dealing with substance-abusing licensees protects patients from harm and is effective in assisting its licensees in recovering from substance abuse in the long term." (Emphasis added.)

Thus, the Legislature has established in the Department of Consumer Affairs (hereafter department) the Substance Abuse Coordination Committee (subd. (2), Sec. 315, hereafter committee). The committee is comprised of the executive officers of each healing arts board within the department,² the State Board of Chiropractic Examiners, and the

² The department's healing arts boards are those boards established under Division 2 (commencing with Section 500) to license and regulate practitioners of the healing arts. Those boards include, among others, the Dental Board of California, the Medical Board of California, the Veterinary Medical Board, and the Board of Registered Nursing.

Osteopathic Medical Board of California (hereafter, collectively, healing arts boards), and a designee of the State Department of Alcohol and Drug Programs (Ibid.). The Director of Consumer Affairs chairs the committee and is authorized to invite individuals or stakeholders who have particular expertise in the area of substance abuse to advise the committee (Ibid.).

The committee is required to formulate uniform and specific standards in each of 16 areas provided by the Legislature, but otherwise has discretion to adopt the uniform standards each healing arts board shall use in dealing with substance-abusing licensees (subd. (c), Sec. 315). The committee adopted its initial set of uniform standards in April 2010, and revised those initial standards as recently as April 2011.³ Although the committee has adopted the uniform standards pursuant to its own procedures, it has yet to adopt those standards pursuant to the rulemaking procedures of the Administrative Procedure Act (Ch. 3.5 (commencing with Sec. 11340), Pt. 1, Div. 3, Title 2, Gov. C.; hereafter APA).

You have asked whether the committee is required to adopt the uniform standards pursuant to the rulemaking procedures of the APA.

The APA establishes basic minimum procedural requirements for the adoption, amendment, or repeal of administrative regulations by state agencies (subd. (a), Sec. 11346, Gov. C.). The APA is applicable to the exercise of any quasi-legislative power conferred by any statute (Ibid.). Quasi-legislative powers consist of the authority to make rules and regulations having the force and effect of law (*California Advocates for Nursing Home Reform v. Bonta* (2003) 106 Cal.App.4th 498, 517; hereafter *California Advocates*). The APA may not be superseded or modified by any subsequent legislation except to the extent that the legislation does so expressly (subd. (a), Sec. 11346, Gov. C.).

The term "regulation" is defined for purposes of the APA to mean "every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure" (Sec. 11342.600, Gov. C.; emphasis added). The APA provides that a state agency shall not issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation under the APA, unless properly adopted under the procedures set forth in the APA, and the Office of Administrative Law is empowered to determine whether any such guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule is a regulation under the APA (Sec. 11340.5, Gov. C.).

In *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 571 (hereafter *Tidewater*), the California Supreme Court found as follows:

³ See http://www.dea.ca.gov/about_dea/sacc/index.shtml (as of September 20, 2011).

"A regulation subject to the APA thus has two principal identifying characteristics. (See *Union of American Physicians & Dentists v. Kizer* (1990) 223 Cal.App.3d 490, 497 [272 Cal.Rptr. 886] [describing two-part test of the Office of Administrative Law].) First, the agency must intend its rule to apply generally, rather than in a specific case. The rule need not, however, apply universally; a rule applies generally so long as it declares how a certain class of cases will be decided. (*Roth v. Department of Veterans Affairs* (1980) 110 Cal.App.3d 622, 630 [167 Cal.Rptr. 552].) Second, the rule must 'implement, interpret, or make specific the law enforced or administered by [the agency], or ... govern [the agency's] procedure.' (Gov. Code, § 11342, subd. (g).)"

If a policy or procedure falls within the definition of a "regulation" within the meaning of the APA, the adopting agency must comply with the procedures for formalizing the regulation, which include public notice and approval by the Office of Administrative Law (*County of Butte v. Emergency Medical Services Authority* (2010) 187 Cal.App.4th 1175, 1200). The Office of Administrative Law is required to review all regulations adopted pursuant to the APA and to make its determinations according to specified standards that include, among other things, assessing the necessity for the regulation and the regulation's consistency with the agency's statutory obligation to implement a statute (subd. (a), Sec. 11349.1, Gov. C.).

Applying these principles to the question presented, the uniform standards are subject to the rulemaking procedures of the APA if the following criteria are met: (1) Section 315 does not expressly preclude application of the APA, (2) the committee is a state agency under the APA, (3) the uniform standards are regulations subject to the APA, and (4) no exemption applies under the APA.

With respect to the first criterion, Section 315 is silent on the application of the APA. Thus, Section 315 does not expressly preclude application of the APA, and the APA will apply to any regulation adopted under Section 315.

We turn next to the second criterion, and whether the committee is an "agency" for purposes of the APA. The word "agency" is defined, for purposes of the APA, by several separate provisions of law. For purposes of the rulemaking procedures of the APA, "agency" is defined to mean a state agency (Sec. 11342.520, Gov. C.). That reference to state agency is defined elsewhere in the Government Code to include every state office, officer, department, division, bureau, board, and commission (subd. (a), Sec. 11000, Gov. C.). The APA does not apply to an agency in the judicial or legislative branch of the state government (subd. (a), Sec. 11340.9, Gov. C.).

Along those lines, the APA is applicable to the exercise of any quasi-legislative power conferred by any statute (subd. (a), Sec. 11346, Gov. C.). Quasi-legislative powers consist of the authority to make rules and regulations having the force and effect of law (*California Advocates*, *supra*, at p. 517). Thus, for purposes of our analysis, we think that an "agency" means any state office, officer, department, division, bureau, board, or commission that exercises quasi-legislative powers.

Here, the committee is a state office comprised of executive officers of the healing arts boards and the Director of Consumer Affairs. Although the Legislature has set forth 16 areas in which the committee is required to adopt standards, the committee itself is required to exercise quasi-legislative powers and adopt uniform standards within those areas. Those standards shall have the force and effect of law, since the healing arts boards, as discussed more extensively below, are required to use the standards in dealing with substance-abusing licensees and the standards are required to govern matters such as when a licensee is temporarily removed from practice or subject to drug testing or work monitoring (paras. (2), (4), and (7), subd. (c), Sec. 315). Accordingly, we think the committee is an agency to which the APA applies.

As to the third criterion, two elements must be met for the uniform standards at issue to be a regulation: they must apply generally and they must implement, interpret, or make specific a law enforced or administered by the agency or that governs its procedures (*Tidewater*, supra, at p. 571; Sec. 11342.600, Gov. C.). Section 315 requires the committee to formulate uniform and specific standards in specified areas that each healing arts board within the department shall use when dealing with substance-abusing licensees, whether or not the board chooses to have a formal diversion program. The uniform standards will not be limited in application to particular instances or individuals but, instead, will apply generally to those licensees. Further, under this statutory scheme, the uniform standards will implement Section 315 and will be enforced and administered by, and will govern the procedures of, each healing arts board that is a member of the committee. Thus, the uniform standards are, in our view, a regulation under the APA.

Lastly, we turn to the fourth criterion, and whether the regulation is exempt from the APA. Certain policies and procedures are expressly exempted by statute from the requirement that they be adopted as regulations pursuant to the APA. In that regard, Section 11340.9 of the Government Code provides as follows:

"11340.9. This chapter does not apply to any of the following:

"(a) An agency in the judicial or legislative branch of the state government.

"(b) A legal ruling of counsel issued by the Franchise Tax Board or State Board of Equalization.

"(c) A form prescribed by a state agency or any instructions relating to the use of the form, but this provision is not a limitation on any requirement that a regulation be adopted pursuant to this chapter when one is needed to implement the law under which the form is issued.

"(d) A regulation that relates only to the internal management of the state agency.

"(e) A regulation that establishes criteria or guidelines to be used by the staff of an agency in performing an audit, investigation, examination, or inspection, settling a commercial dispute, negotiating a commercial

arrangement, or in the defense, prosecution, or settlement of a case, if disclosure of the criteria or guidelines would do any of the following:

"(1) Enable a law violator to avoid detection.

"(2) Facilitate disregard of requirements imposed by law.

"(3) Give clearly improper advantage to a person who is in an adverse position to the state.

"(f) A regulation that embodies the only legally tenable interpretation of a provision of law.

"(g) A regulation that establishes or fixes rates, prices, or tariffs.

"(h) A regulation that relates to the use of public works, including streets and highways, when the effect of the regulation is indicated to the public by means of signs or signals or when the regulation determines uniform standards and specifications for official traffic control devices pursuant to Section 21400 of the Vehicle Code.

"(i) A regulation that is directed to a specifically named person or to a group of persons and does not apply generally throughout the state."

None of the exemptions contained in the APA can be reasonably construed to apply to the committee or the uniform standards to be used by the healing arts boards. In addition, we are aware of no other applicable exemption.

Thus, because all four of the criteria are met, it is our opinion that the Substance Abuse Coordination Committee is required to adopt the uniform standards pursuant to the rulemaking procedures under the Administrative Procedure Act (Ch. 3.5 (commencing with Sec. 11340), Pt. 1, Div. 3, Title 2, Gov. C.).

Having reached this conclusion, we next turn to whether the healing arts boards are required to use the uniform standards if those standards are properly adopted. In addressing that question, we apply certain established rules of statutory construction. To ascertain the meaning of a statute, we begin with the language in which the statute is framed (*Leroy T. v. Workmen's Comp. Appeals Bd.* (1974) 12 Cal.3d 434, 438; *Visalia School Dist. v. Workers' Comp. Appeals Bd.* (1995) 40 Cal.App.4th 1211, 1220). Significance should be given to every word, and construction making some words surplusage is to be avoided (*Lambert Steel Co. v. Heller Financial, Inc.* (1993) 16 Cal.App.4th 1034, 1040). In addition, effect should be given to statutes according to the usual, ordinary import of the language employed in framing them (*DuBois v. Workers' Comp. Appeals Bd.* (1993) 5 Cal.4th 382, 388).

As set forth above, subdivision (c) of Section 315 provides that "the committee shall formulate uniform and specific standards in each of the following areas that each healing arts board shall use in dealing with substance-abusing licensees, whether or not a board chooses to have a formal diversion program" (emphasis added). Section 19 provides that "shall" is mandatory and "may" is permissive. The word "may" is ordinarily construed as permissive, whereas the word "shall" is ordinarily construed as mandatory (*Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 443).

Here, in Section 315, the Legislature uses the term "shall" rather than "may" in providing that each healing arts board "shall use" the specific and uniform standards adopted by the committee when dealing with substance-abusing licensees. The Legislature uses the term "shall use" as compared to "shall consider," "may consider," or "may use." The Legislature's use of the term "shall" indicates that the healing arts boards are required to use the standards adopted by the committee rather than being provided the discretion to do so. Moreover, as employed in this context, the word "use" implies that the healing arts boards must implement and apply those standards rather than merely considering them. Finally, the use of the term "uniform" suggests that the Legislature intended each board to apply the same standards. If the healing arts boards were not required to use the standards as adopted by the committee, the standards employed by these boards would vary rather than being "uniform."

Notwithstanding the plain meaning of Section 315, one could argue that the enactment of Section 315.4 indicates that the Legislature intended that implementation of the uniform standards by the boards be discretionary. Section 315.4, which was added by Senate Bill No. 1172, of the 2009-10 Regular Session (Ch. 517, Stats. 2010; hereafter S.B. 1172), provides that a healing arts board "may adopt regulations authorizing the board to order a licensee on probation or in a diversion program to cease practice for major violations and when the board orders a licensee to undergo a clinical diagnostic evaluation pursuant to the uniform and specific standards adopted and authorized under Section 315." Section 315.4 could be read to imply that a healing arts board is not required to implement those uniform standards because the board was given discretion to adopt the regulations that would allow that board to implement the standards, if necessary.

It is a maxim of statutory construction that a statute is to be construed so as to harmonize its various parts within the legislative purpose of the statute as a whole (*Wells v. Marina City Properties, Inc.* (1981) 29 Cal.3d 781, 788). As discussed above, we believe that the plain meaning of Section 315 requires the healing arts boards to implement the uniform standards adopted by the committee. Thus, whether Section 315.4 indicates, to the contrary, that the Legislature intended the boards to have discretion in that regard depends upon whether there is a rational basis for harmonizing the two statutes.

In harmonizing Sections 315 and 315.4, we note that S.B. 1172 did not make any changes to Section 315, such as changing the term "shall" to "may" in subdivision (c) of Section 315 or deleting any subdivisions of Section 315. S.B. 1172 did not diminish the scope of the authority provided to the committee to adopt the uniform standards. In fact, the analysis of the Senate Committee on Business, Professions and Economic Development for S.B. 1172, dated April 19, 2010 (hereafter committee analysis), describes the purpose of S.B. 1172 and the enactment of Section 315.4, as follows:

"The Author points out that pursuant to SB 1441 (Ridley-Thomas, Chapter 548, Statutes of 2008), the DCA was required to adopt uniform guidelines on sixteen specific standards that would apply to substance abusing health care licensees, regardless of whether a board has a diversion program. Although most of the adopted guidelines do not need additional statutes for

implementation, there are a couple of changes that must be statutorily adopted to fully implement these standards. This bill seeks to provide the statutory authority to allow boards to order a licensee to cease practice if the licensee tests positive for any substance that is prohibited under the terms of the licensee's probation or diversion program, if a major violation is committed and while undergoing clinical diagnostic evaluation" (Committee analysis, at p. 4.)

The committee analysis further provides that the purpose of S.B. 1172 was to grant specific authority to implement those standards and "provide for the full implementation of the Uniform Standards" (committee analysis, at p. 11). The committee analysis at no time implies that the Legislature intended the Section 315 uniform standards to be revised or repealed by S.B. 1172 or that, in enacting Section 315.4, the Legislature intended that the implementation of the uniform standards be subject to the discretion of each healing arts board.

Thus, in our view, Section 315.4 may be reasonably construed in a manner that harmonizes it with Section 315. Specifically, we think that the intent of the Legislature in enacting Section 315.4 was not to make the uniform standards discretionary but to "provide for the full implementation of the Uniform Standards" by providing the authority to adopt regulations where the Legislature believed that further statutory authority was needed. Accordingly, we think implementation by the various healing arts boards of the uniform standards adopted under Section 315 is mandatory.⁴

⁴ Although Section 108 and Division 2 (commencing with Section 500) authorize the healing arts boards to set standards and adopt regulations (see, for example, Secs. 1224, 1614, 2018, 2531.95, 2615, 2715, 2854, 2930, 3025, 3510, and 3546), it is an axiom of statutory construction that a particular or specific provision takes precedence over a conflicting general provision (Sec. 1859, C.C.P.; *Agricultural Labor Relations Bd. v. Superior Court* (1976) 16 Cal.3d 392, 420, app. dism. *Kube v. Agricultural Relations Bd.* (1976) 429 U.S. 802; see also Sec. 3534, Civ. C.). Thus, in our view, the specific requirement under Section 315 that the uniform standards be adopted supersedes any general provision authorizing the boards to set standards and adopt regulations.

Thus, it is our opinion that, if the uniform standards are properly adopted by the Substance Abuse Coordination Committee, the healing arts boards are required to implement them.

Very truly yours,

Diane F. Boyer-Vine
Legislative Counsel



By
Lisa M. Plummer
Deputy Legislative Counsel


LMP:syl



MEMORANDUM

RECEIVED

APR 09 2012

DATE	April 5, 2012
TO	ALL HEALING ARTS BOARDS
FROM	 DOREATHEA JOHNSON Deputy Director, Legal Affairs Department of Consumer Affairs
SUBJECT	Opinion Regarding Uniform Standards for Substance-Abusing Licensees (SB 1441)

This memo addresses a number of questions that have been raised concerning the discretion of healing arts boards, with respect to the Uniform Standards for Substance-Abusing Healing Arts Licensees ("Uniform Standards") that were formulated by the Substance Abuse Coordination Committee and mandated by Business and Professions Code section 315. Previously, there have been discussions and advice rendered, opining that the boards retain the discretion to modify the Uniform Standards. This opinion, largely influenced by the fact that the rulemaking process necessarily involves the exercise of a board's discretion, has been followed by a number of boards as they completed the regulatory process.

Two opinions, one issued by the Legislative Counsel Bureau ("Legislative Counsel") dated October 27, 2011, and an informal legal opinion, rendered by the Government Law Section of the Office of the Attorney General ("Attorney General"), dated February 29, 2012, have been issued and address the discretion of the boards, in adopting the Uniform Standards. This memo is to advise the healing arts boards of this office's opinion regarding the questions raised, after a review of these two opinions. A copy of each opinion is attached for your convenience.

Questions Presented

1. **Do the healing arts boards retain the discretion to modify the content of the specific terms or conditions of probation that make up the Uniform Standards?**

Both Legislative Counsel and the Attorney General concluded that the healing arts boards do not have the discretion to modify the content of the specific terms or conditions of probation that make up the Uniform Standards. We concur with that conclusion.

2. **Do the healing arts boards have the discretion to determine which of the Uniform Standards apply in a particular case?**

Legislative Counsel opined that, unless the Uniform Standards specifically so provide, all of the Uniform Standards must be applied to cases involving substance-abusing licensees, as it was their belief that the Legislative intent was to "provide for the full implementation of the Uniform Standards." The Attorney General agreed with Legislative Counsel. Following our review and analysis of Business and Professions Code Section 315, we concur with both the Office of the Attorney General and the Legislative Counsel.

3. **Is the Substance Abuse Coordination Committee (SACC) the entity with rulemaking authority over the uniform standards to be used by the healing arts boards?**

The Legislative Counsel concluded that the SACC had the authority to promulgate regulations mandating that the boards implement the Uniform Standards. However, the Office of the Attorney General disagreed and concluded that the SACC was not vested with the authority to adopt regulations implementing the uniform standards. We agree with the Office of the Attorney General. It is our opinion that the authority to promulgate the regulations necessary to implement the Uniform Standards, lies with the individual boards that implement, interpret or make specific, the laws administered by those boards. As the SACC is limited to the creation or formulation of the uniform standards, but is not authorized to implement the laws of the healing arts boards, it does not have authority to adopt regulations to implement those standards. Consequently, we agree with the Attorney General's opinion that the SACC is not the rule-making entity with respect to the Uniform Standards, and therefore has no authority to adopt the Uniform Standards as regulations.

It is our recommendation that healing arts boards move forward as soon as possible to implement the mandate of Business and Professions Code section 315, as it relates to

the Uniform Standards. Some of the standards are appropriate for inclusion in an agency's disciplinary guidelines, which necessarily will involve the regulatory process. Others are administrative in nature and not appropriate for inclusion in the disciplinary guidelines. For example, Uniform Standard No. 16 which sets forth reporting requirements would not be appropriate for inclusion in disciplinary guidelines.

Please work with your assigned legal counsel to determine how best to implement the Uniform Standards. This should include a discussion as to whether : (1) the Uniform Standards should be placed in a regulation separate from the disciplinary guidelines; (2) the implementing regulation should include a definition of (or criteria by which to determine) what constitutes a "substance-abusing licensee."

It is hopeful that the foregoing information addresses your concerns with respect to the implementation of the mandatory uniform standards.

Attachments

cc: Denise Brown, DCA Director
Awet Kidane, DCA Chief Deputy Director
DCA Legal Affairs Attorneys

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Uniform Standards Regarding Substance-Abusing Healing Arts Licensees

Senate Bill 1441 (Ridley-Thomas)

Implementation by
Department of Consumer Affairs,
Substance Abuse Coordination Committee



Brian J. Stiger, Director
April 2011



Substance Abuse Coordination Committee

Brian Stiger, Chair
Director, Department of Consumer Affairs

Elinore F. McCance-Katz, M.D., Ph. D.
CA Department of Alcohol & Drug Programs

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Mona Maggio
California State Board of Optometry

Teresa Bello-Jones
**Board of Vocational Nursing and
Psychiatric Technicians**

Donald Krpan, D.O.
Osteopathic Medical Board of California

Francine Davies
Naturopathic Medicine Committee

Virginia Herold
California State Board of Pharmacy

Steve Hartzell
Physical Therapy Board of California

Elberta Portman
Physician Assistant Committee

Jim Rathlesberger
Board of Podiatric Medicine

Robert Kahane
Board of Psychology

Louise Bailey
Board of Registered Nursing

Stephanie Nunez
Respiratory Care Board of California

Annemarie Del Mugnaio
**Speech-Language Pathology & Audiology &
Hearing Aid Dispenser Board**

Susan Geranen
Veterinary Medical Board

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#1 SENATE BILL 1441 REQUIREMENT

Specific requirements for a clinical diagnostic evaluation of the licensee, including, but not limited to, required qualifications for the providers evaluating the licensee.

#1 Uniform Standard

If a healing arts board orders a licensee who is either in a diversion program or whose license is on probation due to a substance abuse problem to undergo a clinical diagnosis evaluation, the following applies:

1. The clinical diagnostic evaluation shall be conducted by a licensed practitioner who:
 - holds a valid, unrestricted license, which includes scope of practice to conduct a clinical diagnostic evaluation;
 - has three (3) years experience in providing evaluations of health professionals with substance abuse disorders; and,
 - is approved by the board.
2. The clinical diagnostic evaluation shall be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations.
3. The clinical diagnostic evaluation report shall:
 - set forth, in the evaluator's opinion, whether the licensee has a substance abuse problem;
 - set forth, in the evaluator's opinion, whether the licensee is a threat to himself/herself or others; and,
 - set forth, in the evaluator's opinion, recommendations for substance abuse treatment, practice restrictions, or other recommendations related to the licensee's rehabilitation and safe practice.

The evaluator shall not have a financial relationship, personal relationship, or business relationship with the licensee within the last five years. The evaluator shall provide an objective, unbiased, and independent evaluation.

If the evaluator determines during the evaluation process that a licensee is a threat to himself/herself or others, the evaluator shall notify the board within 24 hours of such a determination.

For all evaluations, a final written report shall be provided to the board no later than ten (10) days from the date the evaluator is assigned the matter unless the evaluator requests additional information to complete the evaluation, not to exceed 30 days.

#2 SENATE BILL 1441 REQUIREMENT

Specific requirements for the temporary removal of the licensee from practice, in order to enable the licensee to undergo the clinical diagnostic evaluation described in subdivision (a) and any treatment recommended by the evaluator described in subdivision (a) and approved by the board, and specific criteria that the licensee must meet before being permitted to return to practice on a full-time or part-time basis.

#2 Uniform Standard

The following practice restrictions apply to each licensee who undergoes a clinical diagnostic evaluation:

1. The Board shall order the licensee to cease practice during the clinical diagnostic evaluation pending the results of the clinical diagnostic evaluation and review by the diversion program/board staff.
2. While awaiting the results of the clinical diagnostic evaluation required in Uniform Standard #1, the licensee shall be randomly drug tested at least two (2) times per week.

After reviewing the results of the clinical diagnostic evaluation, and the criteria below, a diversion or probation manager shall determine, whether or not the licensee is safe to return to either part-time or fulltime practice. However, no licensee shall be returned to practice until he or she has at least 30 days of negative drug tests.

- the license type;
- the licensee's history;
- the documented length of sobriety/time that has elapsed since substance use
- the scope and pattern of use;
- the treatment history;
- the licensee's medical history and current medical condition;
- the nature, duration and severity of substance abuse, and
- whether the licensee is a threat to himself/herself or the public.

#3 SENATE BILL 1441 REQUIREMENT

Specific requirements that govern the ability of the licensing board to communicate with the licensee's employer about the licensee's status or condition.

#3 Uniform Standard

If the licensee who is either in a board diversion program or whose license is on probation has an employer, the licensee shall provide to the board the names, physical addresses, mailing addresses, and telephone numbers of all employers and supervisors and shall give specific, written consent that the licensee authorizes the board and the employers and supervisors to communicate regarding the licensee's work status, performance, and monitoring.

#4 SENATE BILL 1441 REQUIREMENT

Standards governing all aspects of required testing, including, but not limited to, frequency of testing, randomicity, method of notice to the licensee, number of hours between the provision of notice and the test, standards for specimen collectors, procedures used by specimen collectors, the permissible locations of testing, whether the collection process must be observed by the collector, backup testing requirements when the licensee is on vacation or otherwise unavailable for local testing, requirements for the laboratory that analyzes the specimens, and the required maximum timeframe from the test to the receipt of the result of the test.

#4 Uniform Standard

The following standards shall govern all aspects of testing required to determine abstention from alcohol and drugs for any person whose license is placed on probation or in a diversion program due to substance use:

TESTING FREQUENCY SCHEDULE

A board may order a licensee to drug test at any time. Additionally, each licensee shall be tested RANDOMLY in accordance with the schedule below:

Level	Segments of Probation/Diversion	Minimum Range of Number of Random Tests
I	Year 1	52-104 per year
II*	Year 2+	36-104 per year

*The minimum range of 36-104 tests identified in level II, is for the second year of probation or diversion, and each year thereafter, up to five (5) years. Thereafter, administration of one (1) time per month if there have been no positive drug tests in the previous five (5) consecutive years of probation or diversion.

Nothing precludes a board from increasing the number of random tests for any reason. Any board who finds or has suspicion that a licensee has committed a violation of a board's testing program or who has committed a Major Violation, as identified in Uniform Standard 10, may reestablish the testing cycle by placing that licensee at the beginning of level I, in addition to any other disciplinary action that may be pursued.

EXCEPTIONS TO TESTING FREQUENCY SCHEDULE**I. PREVIOUS TESTING/SOBRIETY**

In cases where a board has evidence that a licensee has participated in a treatment or monitoring program requiring random testing, prior to being subject to testing by the board, the board may give consideration to that testing in altering the testing

frequency schedule so that it is equivalent to this standard.

II. VIOLATION(S) OUTSIDE OF EMPLOYMENT

An individual whose license is placed on probation for a single conviction or incident or two convictions or incidents, spanning greater than seven years from each other, where those violations did not occur at work or while on the licensee's way to work, where alcohol or drugs were a contributing factor, may bypass level I and participate in level II of the testing frequency schedule.

III. NOT EMPLOYED IN HEALTH CARE FIELD

A board may reduce testing frequency to a minimum of 12 times per year for any person who is not practicing OR working in any health care field. If a reduced testing frequency schedule is established for this reason, and if a licensee wants to return to practice or work in a health care field, the licensee shall notify and secure the approval of the licensee's board. Prior to returning to any health care employment, the licensee shall be subject to level I testing frequency for at least 60 days. At such time the person returns to employment (in a health care field), if the licensee has not previously met the level I frequency standard, the licensee shall be subject to completing a full year at level I of the testing frequency schedule, otherwise level II testing shall be in effect.

IV. TOLLING

A board may postpone all testing for any person whose probation or diversion is placed in a tolling status if the overall length of the probationary or diversion period is also tolled. A licensee shall notify the board upon the licensee's return to California and shall be subject to testing as provided in this standard. If the licensee returns to employment in a health care field, and has not previously met the level I frequency standard, the licensee shall be subject to completing a full year at level I of the testing frequency schedule, otherwise level II testing shall be in effect.

V. SUBSTANCE USE DISORDER NOT DIAGNOSED

In cases where no current substance use disorder diagnosis is made, a lesser period of monitoring and toxicology screening may be adopted by the board, but not to be less than 24 times per year.

OTHER DRUG STANDARDS

Drug testing may be required on any day, including weekends and holidays.

The scheduling of drug tests shall be done on a random basis, preferably by a computer program, so that a licensee can make no reasonable assumption of when he/she will be tested again. Boards should be prepared to report data to support back-to-back testing as well as, numerous different intervals of testing.

Licensees shall be required to make daily contact to determine if drug testing is required.

Licensees shall be drug tested on the date of notification as directed by the board.

Specimen collectors must either be certified by the Drug and Alcohol Testing Industry Association or have completed the training required to serve as a collector for the U.S. Department of Transportation.

Specimen collectors shall adhere to the current U.S. Department of Transportation Specimen Collection Guidelines.

Testing locations shall comply with the Urine Specimen Collection Guidelines published by the U.S. Department of Transportation, regardless of the type of test administered.

Collection of specimens shall be observed.

Prior to vacation or absence, alternative drug testing location(s) must be approved by the board.

Laboratories shall be certified and accredited by the U.S. Department of Health and Human Services.

A collection site must submit a specimen to the laboratory within one (1) business day of receipt. A chain of custody shall be used on all specimens. The laboratory shall process results and provide legally defensible test results within seven (7) days of receipt of the specimen. The appropriate board will be notified of non-negative test results within one (1) business day and will be notified of negative test results within seven (7) business days.

A board may use other testing methods in place of, or to supplement biological fluid testing, if the alternate testing method is appropriate.

PETITIONS FOR REINSTATEMENT

Nothing herein shall limit a board's authority to reduce or eliminate the standards specified herein pursuant to a petition for reinstatement or reduction of penalty filed pursuant to Government Code section 11522 or statutes applicable to the board that contains different provisions for reinstatement or reduction of penalty.

OUTCOMES AND AMENDMENTS

For purposes of measuring outcomes and effectiveness, each board shall collect and report historical and post implementation data as follows:

Historical Data - Two Years Prior to Implementation of Standard

Each board should collect the following historical data (as available), for a period of two years, prior to implementation of this standard, for each person subject to testing for banned substances, who has 1) tested positive for a banned substance, 2) failed to

appear or call in, for testing on more than three occasions, 3) failed to pay testing costs, or 4) a person who has given a dilute or invalid specimen.

Post Implementation Data- Three Years

Each board should collect the following data annually, for a period of three years, for every probationer and diversion participant subject to testing for banned substances, following the implementation of this standard.

Data Collection

The data to be collected shall be reported to the Department of Consumer Affairs and the Legislature, upon request, and shall include, but may not be limited to:

Probationer/Diversion Participant Unique Identifier
License Type
Probation/Diversion Effective Date
General Range of Testing Frequency by/for Each Probationer/Diversion Participant
Dates Testing Requested
Dates Tested
Identify the Entity that Performed Each Test
Dates Tested Positive
Dates Contractor (if applicable) was informed of Positive Test
Dates Board was informed of Positive Test
Dates of Questionable Tests (e.g. dilute, high levels)
Date Contractor Notified Board of Questionable Test
Identify Substances Detected or Questionably Detected
Dates Failed to Appear
Date Contractor Notified Board of Failed to Appear
Dates Failed to Call In for Testing
Date Contractor Notified Board of Failed to Call In for Testing
Dates Failed to Pay for Testing
Date(s) Removed/Suspended from Practice (identify which)
Final Outcome and Effective Date (if applicable)

#5 SENATE BILL 1441 REQUIREMENT

Standards governing all aspects of group meeting attendance requirements, including, but not limited to, required qualifications for group meeting facilitators, frequency of required meeting attendance, and methods of documenting and reporting attendance or nonattendance by licensees.

#5 Uniform Standard

If a board requires a licensee to participate in group support meetings, the following shall apply:

When determining the frequency of required group meeting attendance, the board shall give consideration to the following:

- the licensee's history;
- the documented length of sobriety/time that has elapsed since substance use;
- the recommendation of the clinical evaluator;
- the scope and pattern of use;
- the licensee's treatment history; and,
- the nature, duration, and severity of substance abuse.

Group Meeting Facilitator Qualifications and Requirements:

1. The meeting facilitator must have a minimum of three (3) years experience in the treatment and rehabilitation of substance abuse, and shall be licensed or certified by the state or other nationally certified organizations.
2. The meeting facilitator must not have a financial relationship, personal relationship, or business relationship with the licensee within the last year.
3. The group meeting facilitator shall provide to the board a signed document showing the licensee's name, the group name, the date and location of the meeting, the licensee's attendance, and the licensee's level of participation and progress.
4. The facilitator shall report any unexcused absence within 24 hours.

#6 SENATE BILL 1441 REQUIREMENT

Standards used in determining whether inpatient, outpatient, or other type of treatment is necessary.

#6 Uniform Standard

In determining whether inpatient, outpatient, or other type of treatment is necessary, the board shall consider the following criteria:

- recommendation of the clinical diagnostic evaluation pursuant to Uniform Standard #1;
- license type;
- licensee's history;
- documented length of sobriety/time that has elapsed since substance abuse;
- scope and pattern of substance use;
- licensee's treatment history;
- licensee's medical history and current medical condition;
- nature, duration, and severity of substance abuse, and
- threat to himself/herself or the public.

#7 SENATE BILL 1441 REQUIREMENT

Worksite monitoring requirements and standards, including, but not limited to, required qualifications of worksite monitors, required methods of monitoring by worksite monitors, and required reporting by worksite monitors.

#7 Uniform Standard

A board may require the use of worksite monitors. If a board determines that a worksite monitor is necessary for a particular licensee, the worksite monitor shall meet the following requirements to be considered for approval by the board.

1. The worksite monitor shall not have financial, personal, or familial relationship with the licensee, or other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the board. If it is impractical for anyone but the licensee's employer to serve as the worksite monitor, this requirement may be waived by the board; however, under no circumstances shall a licensee's worksite monitor be an employee of the licensee.
2. The worksite monitor's license scope of practice shall include the scope of practice of the licensee that is being monitored, be another health care professional if no monitor with like practice is available, or, as approved by the board, be a person in a position of authority who is capable of monitoring the licensee at work.
3. If the worksite monitor is a licensed healthcare professional he or she shall have an active unrestricted license, with no disciplinary action within the last five (5) years.
4. The worksite monitor shall sign an affirmation that he or she has reviewed the terms and conditions of the licensee's disciplinary order and/or contract and agrees to monitor the licensee as set forth by the board.
5. The worksite monitor must adhere to the following required methods of monitoring the licensee:
 - a) Have face-to-face contact with the licensee in the work environment on a frequent basis as determined by the board, at least once per week.
 - b) Interview other staff in the office regarding the licensee's behavior, if applicable.
 - c) Review the licensee's work attendance.

Reporting by the worksite monitor to the board shall be as follows:

1. Any suspected substance abuse must be verbally reported to the board and the licensee's employer within one (1) business day of occurrence. If occurrence is not during the board's normal business hours the verbal report must be within one (1) hour of the next business day. A written report shall be submitted to the board within 48 hours of occurrence.
2. The worksite monitor shall complete and submit a written report monthly or as directed by the board. The report shall include:
 - the licensee's name;
 - license number;
 - worksite monitor's name and signature;
 - worksite monitor's license number;
 - worksite location(s);
 - dates licensee had face-to-face contact with monitor;
 - staff interviewed, if applicable;
 - attendance report;
 - any change in behavior and/or personal habits;
 - any indicators that can lead to suspected substance abuse.

The licensee shall complete the required consent forms and sign an agreement with the worksite monitor and the board to allow the board to communicate with the worksite monitor.

#8 SENATE BILL 1441 REQUIREMENT

Procedures to be followed when a licensee tests positive for a banned substance.

#8 Uniform Standard

When a licensee tests positive for a banned substance:

1. The board shall order the licensee to cease practice;
2. The board shall contact the licensee and instruct the licensee to leave work; and
3. The board shall notify the licensee's employer, if any, and worksite monitor, if any, that the licensee may not work.

Thereafter, the board should determine whether the positive drug test is in fact evidence of prohibited use. If so, proceed to Standard #9. If not, the board shall immediately lift the cease practice order.

In determining whether the positive test is evidence of prohibited use, the board should, as applicable:

1. Consult the specimen collector and the laboratory;
2. Communicate with the licensee and/or any physician who is treating the licensee; and
3. Communicate with any treatment provider, including group facilitator/s.

#9 SENATE BILL 1441 REQUIREMENT

Procedures to be followed when a licensee is confirmed to have ingested a banned substance.

#9 Uniform Standard

When a board confirms that a positive drug test is evidence of use of a prohibited substance, the licensee has committed a major violation, as defined in Uniform Standard #10 and the board shall impose the consequences set forth in Uniform Standard #10.

#10 SENATE BILL 1441 REQUIREMENT

Specific consequences for major and minor violations. In particular, the committee shall consider the use of a “deferred prosecution” stipulation described in Section 1000 of the Penal Code, in which the licensee admits to self-abuse of drugs or alcohol and surrenders his or her license. That agreement is deferred by the agency until or unless licensee commits a major violation, in which case it is revived and license is surrendered.

#10 Uniform Standard

Major Violations include, but are not limited to:

1. Failure to complete a board-ordered program;
2. Failure to undergo a required clinical diagnostic evaluation;
3. Multiple minor violations;
4. Treating patients while under the influence of drugs/alcohol;
5. Any drug/alcohol related act which would constitute a violation of the practice act or state/federal laws;
6. Failure to obtain biological testing for substance abuse;
7. Testing positive and confirmation for substance abuse pursuant to Uniform Standard #9;
8. Knowingly using, making, altering or possessing any object or product in such a way as to defraud a drug test designed to detect the presence of alcohol or a controlled substance.

Consequences for a major violation include, but are not limited to:

1. Licensee will be ordered to cease practice.
 - a) the licensee must undergo a new clinical diagnostic evaluation, and
 - b) the licensee must test negative for at least a month of continuous drug testing before being allowed to go back to work.
2. Termination of a contract/agreement.
3. Referral for disciplinary action, such as suspension, revocation, or other action as determined by the board.

Minor Violations include, but are not limited to:

1. Untimely receipt of required documentation;
2. Unexcused non-attendance at group meetings;
3. Failure to contact a monitor when required;
4. Any other violations that do not present an immediate threat to the violator or to the public.

Consequences for minor violations include, but are not limited to:

1. Removal from practice;
2. Practice limitations;
3. Required supervision;
4. Increased documentation;
5. Issuance of citation and fine or a warning notice;
6. Required re-evaluation/testing;
7. Other action as determined by the board.

#11 SENATE BILL 1441 REQUIREMENT

Criteria that a licensee must meet in order to petition for return to practice on a full time basis.

#11 Uniform Standard

“Petition” as used in this standard is an informal request as opposed to a “Petition for Modification” under the Administrative Procedure Act.

The licensee shall meet the following criteria before submitting a request (petition) to return to full time practice:

1. Demonstrated sustained compliance with current recovery program.
2. Demonstrated the ability to practice safely as evidenced by current work site reports, evaluations, and any other information relating to the licensee’s substance abuse.
3. Negative drug screening reports for at least six (6) months, two (2) positive worksite monitor reports, and complete compliance with other terms and conditions of the program.

#12 SENATE BILL 1441 REQUIREMENT

Criteria that a licensee must meet in order to petition for reinstatement of a full and unrestricted license.

#12 Uniform Standard

“Petition for Reinstatement” as used in this standard is an informal request (petition) as opposed to a “Petition for Reinstatement” under the Administrative Procedure Act.

The licensee must meet the following criteria to request (petition) for a full and unrestricted license.

1. Demonstrated sustained compliance with the terms of the disciplinary order, if applicable.
2. Demonstrated successful completion of recovery program, if required.
3. Demonstrated a consistent and sustained participation in activities that promote and support their recovery including, but not limited to, ongoing support meetings, therapy, counseling, relapse prevention plan, and community activities.
4. Demonstrated that he or she is able to practice safely.
5. Continuous sobriety for three (3) to five (5) years.

#13 SENATE BILL 1441 REQUIREMENT

If a board uses a private-sector vendor that provides diversion services, (1) standards for immediate reporting by the vendor to the board of any and all noncompliance with process for providers or contractors that provide diversion services, including, but not limited to, specimen collectors, group meeting facilitators, and worksite monitors; (3) standards requiring the vendor to disapprove and discontinue the use of providers or contractors that fail to provide effective or timely diversion services; and (4) standards for a licensee's termination from the program and referral to enforcement.

#13 Uniform Standard

1. A vendor must report to the board any major violation, as defined in Uniform Standard #10, within one (1) business day. A vendor must report to the board any minor violation, as defined in Uniform Standard #10, within five (5) business days.
2. A vendor's approval process for providers or contractors that provide diversion services, including, but not limited to, specimen collectors, group meeting facilitators, and worksite monitors is as follows:

(a) Specimen Collectors:

- (1) The provider or subcontractor shall possess all the materials, equipment, and technical expertise necessary in order to test every licensee for which he or she is responsible on any day of the week.
- (2) The provider or subcontractor shall be able to scientifically test for urine, blood, and hair specimens for the detection of alcohol, illegal, and controlled substances.
- (3) The provider or subcontractor must provide collection sites that are located in areas throughout California.
- (4) The provider or subcontractor must have an automated 24-hour toll-free telephone system and/or a secure on-line computer database that allows the participant to check in daily for drug testing.
- (5) The provider or subcontractor must have or be subcontracted with operating collection sites that are engaged in the business of collecting urine, blood, and hair follicle specimens for the testing of drugs and alcohol within the State of California.
- (6) The provider or subcontractor must have a secure, HIPAA compliant, website or computer system to allow staff access to drug test results and compliance reporting information that is available 24 hours a day.

- (7) The provider or subcontractor shall employ or contract with toxicologists that are licensed physicians and have knowledge of substance abuse disorders and the appropriate medical training to interpret and evaluate laboratory drug test results, medical histories, and any other information relevant to biomedical information.
- (8) A toxicology screen will not be considered negative if a positive result is obtained while practicing, even if the practitioner holds a valid prescription for the substance.
- (9) Must undergo training as specified in Uniform Standard #4 (6).

(b) Group Meeting Facilitators:

A group meeting facilitator for any support group meeting:

- (1) must have a minimum of three (3) years experience in the treatment and rehabilitation of substance abuse;
- (2) must be licensed or certified by the state or other nationally certified organization;
- (3) must not have a financial relationship, personal relationship, or business relationship with the licensee within the last year;
- (4) shall report any unexcused absence within 24 hours to the board, and,
- (5) shall provide to the board a signed document showing the licensee's name, the group name, the date and location of the meeting, the licensee's attendance, and the licensee's level of participation and progress.

(c) Work Site Monitors:

The worksite monitor must meet the following qualifications:

- (1) Shall not have financial, personal, or familial relationship with the licensee, or other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the board. If it is impractical for anyone but the licensee's employer to serve as the worksite monitor, this requirement may be waived by the board; however, under no circumstances shall a licensee's worksite monitor be an employee of the licensee.
- (2) The monitor's licensure scope of practice shall include the scope of practice of the licensee that is being monitored, be another health care professional if no

monitor with like practice is available, or, as approved by the board, be a person in a position of authority who is capable of monitoring the licensee at work.

- (3) Shall have an active unrestricted license, with no disciplinary action within the last five (5) years.
 - (4) Shall sign an affirmation that he or she has reviewed the terms and conditions of the licensee's disciplinary order and/or contract and agrees to monitor the licensee as set forth by the board.
2. The worksite monitor must adhere to the following required methods of monitoring the licensee:
 - a) Have face-to-face contact with the licensee in the work environment on a frequent basis as determined by the board, at least once per week.
 - b) Interview other staff in the office regarding the licensee's behavior, if applicable.
 - c) Review the licensee's work attendance.
 3. Any suspected substance abuse must be verbally reported to the contractor, the board, and the licensee's employer within one (1) business day of occurrence. If occurrence is not during the board's normal business hours the verbal report must be within one (1) hour of the next business day. A written report shall be submitted to the board within 48 hours of occurrence.
 4. The worksite monitor shall complete and submit a written report monthly or as directed by the board. The report shall include:
 - the licensee's name;
 - license number;
 - worksite monitor's name and signature;
 - worksite monitor's license number;
 - worksite location(s);
 - dates licensee had face-to-face contact with monitor;
 - staff interviewed, if applicable;
 - attendance report;
 - any change in behavior and/or personal habits;

- any indicators that can lead to suspected substance abuse.

(d) Treatment Providers

Treatment facility staff and services must have:

- (1) Licensure and/or accreditation by appropriate regulatory agencies;
- (2) Sufficient resources available to adequately evaluate the physical and mental needs of the client, provide for safe detoxification, and manage any medical emergency;
- (3) Professional staff who are competent and experienced members of the clinical staff;
- (4) Treatment planning involving a multidisciplinary approach and specific aftercare plans;
- (5) Means to provide treatment/progress documentation to the provider.

(e) General Vendor Requirements

The vendor shall disapprove and discontinue the use of providers or contractors that fail to provide effective or timely diversion services as follows:

- (1) The vendor is fully responsible for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them. No subcontract shall relieve the vendor of its responsibilities and obligations. All state policies, guidelines, and requirements apply to all subcontractors.
- (2) If a subcontractor fails to provide effective or timely services as listed above, but not limited to any other subcontracted services, the vendor will terminate services of said contractor within 30 business days of notification of failure to provide adequate services.
- (3) The vendor shall notify the appropriate board within five (5) business days of termination of said subcontractor.

#14 SENATE BILL 1441 REQUIREMENT

If a board uses a private-sector vendor that provides diversion services, the extent to which licensee participation in that program shall be kept confidential from the public.

#14 Uniform Standard

The board shall disclose the following information to the public for licensees who are participating in a board monitoring/diversion program regardless of whether the licensee is a self-referral or a board referral. However, the disclosure shall not contain information that the restrictions are a result of the licensee's participation in a diversion program.

- Licensee's name;
- Whether the licensee's practice is restricted, or the license is on inactive status;
- A detailed description of any restriction imposed.

#15 SENATE BILL 1441 REQUIREMENT

If a board uses a private-sector vendor that provides diversion services, a schedule for external independent audits of the vendor's performance in adhering to the standards adopted by the committee.

#15 Uniform Standard

1. If a board uses a private-sector vendor to provide monitoring services for its licensees, an external independent audit must be conducted at least once every three (3) years by a qualified, independent reviewer or review team from outside the department with no real or apparent conflict of interest with the vendor providing the monitoring services. In addition, the reviewer shall not be a part of or under the control of the board. The independent reviewer or review team must consist of individuals who are competent in the professional practice of internal auditing and assessment processes and qualified to perform audits of monitoring programs.
2. The audit must assess the vendor's performance in adhering to the uniform standards established by the board. The reviewer must provide a report of their findings to the board by June 30 of each three (3) year cycle. The report shall identify any material inadequacies, deficiencies, irregularities, or other non-compliance with the terms of the vendor's monitoring services that would interfere with the board's mandate of public protection.
3. The board and the department shall respond to the findings in the audit report.

#16 SENATE BILL 1441 Requirement

Measurable criteria and standards to determine whether each board's method of dealing with substance-abusing licensees protects patients from harm and is effective in assisting its licensees in recovering from substance abuse in the long term.

#16 Uniform Standard

Each board shall report the following information on a yearly basis to the Department of Consumer Affairs and the Legislature as it relates to licensees with substance abuse problems who are either in a board probation and/or diversion program.

- Number of intakes into a diversion program
- Number of probationers whose conduct was related to a substance abuse problem
- Number of referrals for treatment programs
- Number of relapses (break in sobriety)
- Number of cease practice orders/license in-activations
- Number of suspensions
- Number terminated from program for noncompliance
- Number of successful completions based on uniform standards
- Number of major violations; nature of violation and action taken
- Number of licensees who successfully returned to practice
- Number of patients harmed while in diversion

The above information shall be further broken down for each licensing category, specific substance abuse problem (i.e. cocaine, alcohol, Demerol etc.), whether the licensee is in a diversion program and/or probation program.

If the data indicates that licensees in specific licensing categories or with specific substance abuse problems have either a higher or lower probability of success, that information shall be taken into account when determining the success of a program. It may also be used to determine the risk factor when a board is determining whether a license should be revoked or placed on probation.

The board shall use the following criteria to determine if its program protects patients from harm and is effective in assisting its licensees in recovering from substance abuse in the long term.

- At least 100 percent of licensees who either entered a diversion program or whose license was placed on probation as a result of a substance abuse problem successfully completed either the program or the probation, or had their license to practice revoked or surrendered on a timely basis based on noncompliance of those programs.
- At least 75 percent of licensees who successfully completed a diversion program or probation did not have any substantiated complaints related to substance abuse for at least five (5) years after completion.

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Senate Bill No. 1441

CHAPTER 548

An act to amend Sections 1695.1, 1695.5, 1695.6, 1697, 1698, 2361, 2365, 2366, 2367, 2369, 2663, 2665, 2666, 2770.1, 2770.7, 2770.8, 2770.11, 2770.12, 3501, 3534.1, 3534.3, 3534.4, 3534.9, and 4371 of, and to add Article 3.6 (commencing with Section 315) to Chapter 4 of Division 1 of, the Business and Professions Code, relating to health care.

[Approved by Governor September 28, 2008. Filed with
Secretary of State September 28, 2008.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1441, Ridley-Thomas. Healing arts practitioners: substance abuse.

Existing law requires various healing arts licensing boards, including the Dental Board of California, the Board of Registered Nursing, the Physical Therapy Board of California, the Physician Assistant Committee, the Osteopathic Medical Board of California, and the California State Board of Pharmacy to establish and administer diversion or recovery programs or diversion evaluation committees for the rehabilitation of healing arts practitioners whose competency is impaired due to the abuse of drugs or alcohol, and gives the diversion evaluation committees certain duties related to termination of a licensee from the diversion program and reporting termination, designing treatment programs, denying participation in the program, reviewing activities and performance of contractors, determining completion of the program, and purging and destroying records, as specified. Existing law requires the California State Board of Pharmacy to contract with one or more qualified contractors to administer the pharmacists recovery program and requires the board to review the pharmacists recovery program on a quarterly basis, as specified.

This bill would establish in the Department of Consumer Affairs the Substance Abuse Coordination Committee, which would be comprised of the executive officers of the department's healing arts licensing boards, as specified, and a designee of the State Department of Alcohol Drug Programs. The bill would require the committee to formulate, by January 1, 2010, uniform and specific standards in specified areas that each healing arts board would be required to use in dealing with substance-abusing licensees. The bill would specify that the program managers of the diversion programs for the Dental Board of California, the Board of Registered Nursing, the Physical Therapy Board of California, the Physician Assistant Committee, and the Osteopathic Medical Board of California, as designated by the executive officers of those entities, are responsible for certain duties, including, as specified, duties related to termination of a licensee from the diversion program, the review and evaluation of recommendations of the committee,

approving the designs of treatment programs, denying participation in the program, reviewing activities and performance of contractors, and determining completion of the program. The bill would also provide that diversion evaluation committees created by any of the specified boards or committees operate under the direction of the program manager of the diversion program, and would require those diversion evaluation committees to make certain recommendations. The bill would require the executive officer of the California State Board of Pharmacy to designate a program manager of the pharmacists recovery program, and would require the program manager to review the pharmacists recovery program quarterly and to work with the contractors, as specified. The bill would set forth provisions regarding entry of a registered nurse into the diversion program and the investigation and discipline of registered nurses who are in, or have been in, the diversion program, and would require registered nurses in the diversion program to sign an agreement of understanding regarding withdrawal or termination from the program, as specified.

The bill would specify that the diversion program responsibilities imposed on licensing boards under these provisions shall be considered current operating expenses of those boards.

The people of the State of California do enact as follows:

SECTION 1. The Legislature hereby finds and declares all of the following:

(a) Substance abuse is an increasing problem in the health care professions, where the impairment of a health care practitioner for even one moment can mean irreparable harm to a patient.

(b) Several health care licensing boards have “diversion programs” designed to identify substance-abusing licensees, direct them to treatment and monitoring, and return them to practice in a manner that will not endanger the public health and safety.

(c) Substance abuse monitoring programs, particularly for health care professionals, must operate with the highest level of integrity and consistency. Patient protection is paramount.

(d) The diversion program of the Medical Board of California, created in 1981, has been subject to five external performance audits in its 27-year history and has failed all five audits, which uniformly concluded that the program has inadequately monitored substance-abusing physicians and has failed to promptly terminate from the program, and appropriately refer for discipline, physicians who do not comply with the terms and conditions of the program, thus placing patients at risk of harm.

(e) The medical board’s diversion program has failed to protect patients from substance-abusing physicians, and the medical board has properly decided to cease administering the program effective June 30, 2008.

(f) The administration of diversion programs created at other health care boards has been contracted to a series of private vendors, and none of those

vendors has ever been subject to a performance audit, such that it is not possible to determine whether those programs are effective in monitoring substance-abusing licensees and assisting them to recover from their addiction in the long term.

(g) Various health care licensing boards have inconsistent or nonexistent standards that guide the way they deal with substance-abusing licensees.

(h) Patients would be better protected from substance-abusing licensees if their regulatory boards agreed to and enforced consistent and uniform standards and best practices in dealing with substance-abusing licensees.

SEC. 2. It is the intent of the Legislature that:

(a) Pursuant to Section 156.1 of the Business and Professions Code and Section 8546.7 of the Government Code, that the Department of Consumer Affairs conduct a thorough audit of the effectiveness, efficiency, and overall performance of the vendor chosen by the department to manage diversion programs for substance-abusing licensees of health care licensing boards created in the Business and Professions Code, and make recommendations regarding the continuation of the programs and any changes or reforms required to ensure that individuals participating in the programs are appropriately monitored, and the public is protected from health care practitioners who are impaired due to alcohol or drug abuse or mental or physical illness.

(b) The audit shall identify, by type of board licensee, the percentage of self-referred participants, board-referred participants, and board-ordered participants. The audit shall describe in detail the diversion services provided by the vendor, including all aspects of bodily fluids testing, including, but not limited to, frequency of testing, randomicity, method of notice to participants, number of hours between the provision of notice and the test, standards for specimen collectors, procedures used by specimen collectors, such as whether the collection process is observed by the collector, location of testing, and average timeframe from the date of the test to the date the result of the test becomes available; group meeting attendance requirements, including, but not limited to, required qualifications for group meeting facilitators, frequency of required meeting attendance, and methods of documenting and reporting attendance or nonattendance by program participants; standards used in determining whether inpatient or outpatient treatment is necessary; and, if applicable, worksite monitoring requirements and standards. The audit shall review the timeliness of diversion services provided by the vendor; the thoroughness of documentation of treatment, aftercare, and monitoring services received by participants; and the thoroughness of documentation of the effectiveness of the treatment and aftercare services received by participants. In determining the effectiveness and efficiency of the vendor, the audit shall evaluate the vendor's approval process for providers or contractors that provide diversion services, including specimen collectors, group meeting facilitators, and worksite monitors; the vendor's disapproval of providers or contractors that fail to provide effective or timely diversion services; and the vendor's promptness in notifying the boards when a participant fails to comply with the terms of his or her

diversion contract or the rules of the board's program. The audit shall also recommend whether the vendor should be more closely monitored by the department, including whether the vendor should provide the department with periodic reports demonstrating the timeliness and thoroughness of documentation of noncompliance with diversion program contracts and regarding its approval and disapproval of providers and contractors that provide diversion services.

(c) The vendor and its staff shall cooperate with the department and shall provide data, information, and case files as requested by the department to perform all of his or her duties. The provision of confidential data, information, and case files from health care-related boards and the vendor to the department shall not constitute a waiver of any exemption from disclosure or discovery or of any confidentiality protection or privilege otherwise provided by law that is applicable to the data, information, or case files. It is the Legislature's intent that the audit be completed by June 30, 2010, and on subsequent years thereafter as determined by the department.

SEC. 3. Article 3.6 (commencing with Section 315) is added to Chapter 4 of Division 1 of the Business and Professions Code, to read:

Article 3.6. Uniform Standards Regarding Substance-Abusing Healing
Arts Licensees

315. (a) For the purpose of determining uniform standards that will be used by healing arts boards in dealing with substance-abusing licensees, there is established in the Department of Consumer Affairs the Substance Abuse Coordination Committee. The committee shall be comprised of the executive officers of the department's healing arts boards established pursuant to Division 2 (commencing with Section 500), the State Board of Chiropractic Examiners, the Osteopathic Medical Board of California, and a designee of the State Department of Alcohol and Drug Programs. The Director of Consumer Affairs shall chair the committee and may invite individuals or stakeholders who have particular expertise in the area of substance abuse to advise the committee.

(b) The committee shall be subject to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Division 3 of Title 2 of the Government Code).

(c) By January 1, 2010, the committee shall formulate uniform and specific standards in each of the following areas that each healing arts board shall use in dealing with substance-abusing licensees, whether or not a board chooses to have a formal diversion program:

(1) Specific requirements for a clinical diagnostic evaluation of the licensee, including, but not limited to, required qualifications for the providers evaluating the licensee.

(2) Specific requirements for the temporary removal of the licensee from practice, in order to enable the licensee to undergo the clinical diagnostic

evaluation described in subdivision (a) and any treatment recommended by the evaluator described in subdivision (a) and approved by the board, and specific criteria that the licensee must meet before being permitted to return to practice on a full-time or part-time basis.

(3) Specific requirements that govern the ability of the licensing board to communicate with the licensee's employer about the licensee's status and condition.

(4) Standards governing all aspects of required testing, including, but not limited to, frequency of testing, randomicity, method of notice to the licensee, number of hours between the provision of notice and the test, standards for specimen collectors, procedures used by specimen collectors, the permissible locations of testing, whether the collection process must be observed by the collector, backup testing requirements when the licensee is on vacation or otherwise unavailable for local testing, requirements for the laboratory that analyzes the specimens, and the required maximum timeframe from the test to the receipt of the result of the test.

(5) Standards governing all aspects of group meeting attendance requirements, including, but not limited to, required qualifications for group meeting facilitators, frequency of required meeting attendance, and methods of documenting and reporting attendance or nonattendance by licensees.

(6) Standards used in determining whether inpatient, outpatient, or other type of treatment is necessary.

(7) Worksite monitoring requirements and standards, including, but not limited to, required qualifications of worksite monitors, required methods of monitoring by worksite monitors, and required reporting by worksite monitors.

(8) Procedures to be followed when a licensee tests positive for a banned substance.

(9) Procedures to be followed when a licensee is confirmed to have ingested a banned substance.

(10) Specific consequences for major violations and minor violations. In particular, the committee shall consider the use of a "deferred prosecution" stipulation similar to the stipulation described in Section 1000 of the Penal Code, in which the licensee admits to self-abuse of drugs or alcohol and surrenders his or her license. That agreement is deferred by the agency unless or until the licensee commits a major violation, in which case it is revived and the license is surrendered.

(11) Criteria that a licensee must meet in order to petition for return to practice on a full-time basis.

(12) Criteria that a licensee must meet in order to petition for reinstatement of a full and unrestricted license.

(13) If a board uses a private-sector vendor that provides diversion services, standards for immediate reporting by the vendor to the board of any and all noncompliance with any term of the diversion contract or probation; standards for the vendor's approval process for providers or contractors that provide diversion services, including, but not limited to, specimen collectors, group meeting facilitators, and worksite monitors;

standards requiring the vendor to disapprove and discontinue the use of providers or contractors that fail to provide effective or timely diversion services; and standards for a licensee's termination from the program and referral to enforcement.

(14) If a board uses a private-sector vendor that provides diversion services, the extent to which licensee participation in that program shall be kept confidential from the public.

(15) If a board uses a private-sector vendor that provides diversion services, a schedule for external independent audits of the vendor's performance in adhering to the standards adopted by the committee.

(16) Measurable criteria and standards to determine whether each board's method of dealing with substance-abusing licensees protects patients from harm and is effective in assisting its licensees in recovering from substance abuse in the long term.

SEC. 4. Section 1695.1 of the Business and Professions Code is amended to read:

1695.1. As used in this article:

(a) "Board" means the Board of Dental Examiners of California.

(b) "Committee" means a diversion evaluation committee created by this article.

(c) "Program manager" means the staff manager of the diversion program, as designated by the executive officer of the board. The program manager shall have background experience in dealing with substance abuse issues.

SEC. 5. Section 1695.5 of the Business and Professions Code is amended to read:

1695.5. (a) The board shall establish criteria for the acceptance, denial, or termination of licentiates in a diversion program. Unless ordered by the board as a condition of licentiate disciplinary probation, only those licentiates who have voluntarily requested diversion treatment and supervision by a committee shall participate in a diversion program.

(b) A licentiate who is not the subject of a current investigation may self-refer to the diversion program on a confidential basis, except as provided in subdivision (f).

(c) A licentiate under current investigation by the board may also request entry into the diversion program by contacting the board's Diversion Program Manager. The Diversion Program Manager may refer the licentiate requesting participation in the program to a diversion evaluation committee for evaluation of eligibility. Prior to authorizing a licentiate to enter into the diversion program, the Diversion Program Manager may require the licentiate, while under current investigation for any violations of the Dental Practice Act or other violations, to execute a statement of understanding that states that the licentiate understands that his or her violations of the Dental Practice Act or other statutes that would otherwise be the basis for discipline, may still be investigated and the subject of disciplinary action.

(d) If the reasons for a current investigation of a licentiate are based primarily on the self-administration of any controlled substance or dangerous drugs or alcohol under Section 1681 of the Business and Professions Code,

or the illegal possession, prescription, or nonviolent procurement of any controlled substance or dangerous drugs for self-administration that does not involve actual, direct harm to the public, the board shall close the investigation without further action if the licentiate is accepted into the board's diversion program and successfully completes the requirements of the program. If the licentiate withdraws or is terminated from the program by a diversion evaluation committee, and the termination is approved by the program manager, the investigation shall be reopened and disciplinary action imposed, if warranted, as determined by the board.

(e) Neither acceptance nor participation in the diversion program shall preclude the board from investigating or continuing to investigate, or taking disciplinary action or continuing to take disciplinary action against, any licentiate for any unprofessional conduct committed before, during, or after participation in the diversion program.

(f) All licentiates shall sign an agreement of understanding that the withdrawal or termination from the diversion program at a time when a diversion evaluation committee determines the licentiate presents a threat to the public's health and safety shall result in the utilization by the board of diversion treatment records in disciplinary or criminal proceedings.

(g) Any licentiate terminated from the diversion program for failure to comply with program requirements is subject to disciplinary action by the board for acts committed before, during, and after participation in the diversion program. A licentiate who has been under investigation by the board and has been terminated from the diversion program by a diversion evaluation committee shall be reported by the diversion evaluation committee to the board.

SEC. 6. Section 1695.6 of the Business and Professions Code is amended to read:

1695.6. A committee created under this article operates under the direction of the program manager. The program manager has the primary responsibility to review and evaluate recommendations of the committee. Each committee shall have the following duties and responsibilities:

(a) To evaluate those licentiates who request to participate in the diversion program according to the guidelines prescribed by the board and to make recommendations. In making the recommendations, a committee shall consider the recommendations of any licentiates designated by the board to serve as consultants on the admission of the licentiate to the diversion program.

(b) To review and designate those treatment facilities to which licentiates in a diversion program may be referred.

(c) To receive and review information concerning a licentiate participating in the program.

(d) To consider in the case of each licentiate participating in a program whether he or she may with safety continue or resume the practice of dentistry.

(e) To perform such other related duties, under the direction of the board or program manager, as the board may by regulation require.

SEC. 7. Section 1697 of the Business and Professions Code is amended to read:

1697. Each licentiate who requests participation in a diversion program shall agree to cooperate with the treatment program designed by the committee and approved by the program manager and to bear all costs related to the program, unless the cost is waived by the board. Any failure to comply with the provisions of a treatment program may result in termination of the licentiate's participation in a program.

SEC. 8. Section 1698 of the Business and Professions Code is amended to read:

1698. (a) After the committee and the program manager in their discretion have determined that a licentiate has been rehabilitated and the diversion program is completed, the committee shall purge and destroy all records pertaining to the licentiate's participation in a diversion program.

(b) Except as authorized by subdivision (f) of Section 1695.5, all board and committee records and records of proceedings pertaining to the treatment of a licentiate in a program shall be kept confidential and are not subject to discovery or subpoena.

SEC. 9. Section 2361 of the Business and Professions Code is amended to read:

2361. As used in this article:

(a) "Board" means the Osteopathic Medical Board of California.

(b) "Diversion program" means a treatment program created by this article for osteopathic physicians and surgeons whose competency may be threatened or diminished due to abuse of drugs or alcohol.

(c) "Committee" means a diversion evaluation committee created by this article.

(d) "Participant" means a California licensed osteopathic physician and surgeon.

(e) "Program manager" means the staff manager of the diversion program, as designated by the executive officer of the board. The program manager shall have background experience in dealing with substance abuse issues.

SEC. 10. Section 2365 of the Business and Professions Code is amended to read:

2365. (a) The board shall establish criteria for the acceptance, denial, or termination of participants in the diversion program. Unless ordered by the board as a condition of disciplinary probation, only those participants who have voluntarily requested diversion treatment and supervision by a committee shall participate in the diversion program.

(b) A participant who is not the subject of a current investigation may self-refer to the diversion program on a confidential basis, except as provided in subdivision (f).

(c) A participant under current investigation by the board may also request entry into the diversion program by contacting the board's Diversion Program Manager. The Diversion Program Manager may refer the participant requesting participation in the program to a diversion evaluation committee for evaluation of eligibility. Prior to authorizing a licentiate to enter into the

diversion program, the Diversion Program Manager may require the licensee, while under current investigation for any violations of the Medical Practice Act or other violations, to execute a statement of understanding that states that the licensee understands that his or her violations of the Medical Practice Act or other statutes that would otherwise be the basis for discipline may still be investigated and the subject of disciplinary action.

(d) If the reasons for a current investigation of a participant are based primarily on the self-administration of any controlled substance or dangerous drugs or alcohol under Section 2239, or the illegal possession, prescription, or nonviolent procurement of any controlled substance or dangerous drugs for self-administration that does not involve actual, direct harm to the public, the board may close the investigation without further action if the licensee is accepted into the board's diversion program and successfully completes the requirements of the program. If the participant withdraws or is terminated from the program by a diversion evaluation committee, and the termination is approved by the program manager, the investigation may be reopened and disciplinary action imposed, if warranted, as determined by the board.

(e) Neither acceptance nor participation in the diversion program shall preclude the board from investigating or continuing to investigate, or taking disciplinary action or continuing to take disciplinary action against, any participant for any unprofessional conduct committed before, during, or after participation in the diversion program.

(f) All participants shall sign an agreement of understanding that the withdrawal or termination from the diversion program at a time when a diversion evaluation committee determines the licensee presents a threat to the public's health and safety shall result in the utilization by the board of diversion treatment records in disciplinary or criminal proceedings.

(g) Any participant terminated from the diversion program for failure to comply with program requirements is subject to disciplinary action by the board for acts committed before, during, and after participation in the diversion program. A participant who has been under investigation by the board and has been terminated from the diversion program by a diversion evaluation committee shall be reported by the diversion evaluation committee to the board.

SEC. 11. Section 2366 of the Business and Professions Code is amended to read:

2366. A committee created under this article operates under the direction of the diversion program manager. The program manager has the primary responsibility to review and evaluate recommendations of the committee. Each committee shall have the following duties and responsibilities:

(a) To evaluate those licensees who request participation in the program according to the guidelines prescribed by the board, and to make recommendations.

(b) To review and designate those treatment facilities and services to which a participant in the program may be referred.

(c) To receive and review information concerning participants in the program.

(d) To consider whether each participant in the treatment program may safely continue or resume the practice of medicine.

(e) To prepare quarterly reports to be submitted to the board, which include, but are not limited to, information concerning the number of cases accepted, denied, or terminated with compliance or noncompliance and a cost analysis of the program.

(f) To promote the program to the public and within the profession, including providing all current licentiates with written information concerning the program.

(g) To perform such other related duties, under the direction of the board or the program manager, as the board may by regulation require.

SEC. 12. Section 2367 of the Business and Professions Code is amended to read:

2367. (a) Each licensee who requests participation in a treatment program shall agree to cooperate with the treatment program designed by the committee and approved by the program manager. The committee shall inform each participant in the program of the procedures followed, the rights and responsibilities of the participant, and the possible results of noncompliance with the program. Any failure to comply with the treatment program may result in termination of participation.

(b) Participation in a program under this article shall not be a defense to any disciplinary action which may be taken by the board. Further, no provision of this article shall preclude the board from commencing disciplinary action against a licensee who is terminated from a program established pursuant to this article.

SEC. 13. Section 2369 of the Business and Professions Code is amended to read:

2369. (a) After the committee and the program manager, in their discretion, have determined that a participant has been rehabilitated and the program is completed, the committee shall purge and destroy all records pertaining to the participation in a treatment program.

(b) Except as authorized by subdivision (f) of Section 2365, all board and committee records and records of proceedings pertaining to the treatment of a participant in a program shall be confidential and are not subject to discovery or subpoena except in the case of discovery or subpoena in any criminal proceeding.

SEC. 14. Section 2663 of the Business and Professions Code is amended to read:

2663. The board shall establish and administer a diversion program for the rehabilitation of physical therapists and physical therapist assistants whose competency is impaired due to the abuse of drugs or alcohol. The board may contract with any other state agency or a private organization to perform its duties under this article. The board may establish one or more diversion evaluation committees to assist it in carrying out its duties under this article. Any diversion evaluation committee established by the board shall operate under the direction of the diversion program manager, as designated by the executive officer of the board. The program manager has

the primary responsibility to review and evaluate recommendations of the committee.

SEC. 15. Section 2665 of the Business and Professions Code is amended to read:

2665. Each diversion evaluation committee has the following duties and responsibilities:

(a) To evaluate physical therapists and physical therapist assistants who request participation in the program and to make recommendations. In making recommendations, the committee shall consider any recommendations from professional consultants on the admission of applicants to the diversion program.

(b) To review and designation of treatment facilities to which physical therapists and physical therapist assistants in the diversion program may be referred.

(c) To receive and review information concerning physical therapists and physical therapist assistants participating in the program.

(d) Calling meetings as necessary to consider the requests of physical therapists and physical therapist assistants to participate in the diversion program, to consider reports regarding participants in the program, and to consider any other matters referred to it by the board.

(e) To consider whether each participant in the diversion program may with safety continue or resume the practice of physical therapy.

(f) To set forth in writing the terms and conditions of the diversion agreement that is approved by the program manager for each physical therapist and physical therapist assistant participating in the program, including treatment, supervision, and monitoring requirements.

(g) Holding a general meeting at least twice a year, which shall be open and public, to evaluate the diversion program's progress, to prepare reports to be submitted to the board, and to suggest proposals for changes in the diversion program.

(h) For the purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, any member of a diversion evaluation committee shall be considered a public employee. No board or diversion evaluation committee member, contractor, or agent thereof, shall be liable for any civil damage because of acts or omissions which may occur while acting in good faith in a program established pursuant to this article.

SEC. 16. Section 2666 of the Business and Professions Code is amended to read:

2666. (a) Criteria for acceptance into the diversion program shall include all of the following:

(1) The applicant shall be licensed as a physical therapist or approved as a physical therapist assistant by the board and shall be a resident of California.

(2) The applicant shall be found to abuse dangerous drugs or alcoholic beverages in a manner which may affect his or her ability to practice physical therapy safely or competently.

(3) The applicant shall have voluntarily requested admission to the program or shall be accepted into the program in accordance with terms and conditions resulting from a disciplinary action.

(4) The applicant shall agree to undertake any medical or psychiatric examination ordered to evaluate the applicant for participation in the program.

(5) The applicant shall cooperate with the program by providing medical information, disclosure authorizations, and releases of liability as may be necessary for participation in the program.

(6) The applicant shall agree in writing to cooperate with all elements of the treatment program designed for him or her.

Any applicant may be denied participation in the program if the board, the program manager, or a diversion evaluation committee determines that the applicant will not substantially benefit from participation in the program or that the applicant's participation in the program creates too great a risk to the public health, safety, or welfare.

(b) A participant may be terminated from the program for any of the following reasons:

(1) The participant has successfully completed the treatment program.

(2) The participant has failed to comply with the treatment program designated for him or her.

(3) The participant fails to meet any of the criteria set forth in subdivision (a) or (c).

(4) It is determined that the participant has not substantially benefited from participation in the program or that his or her continued participation in the program creates too great a risk to the public health, safety, or welfare. Whenever an applicant is denied participation in the program or a participant is terminated from the program for any reason other than the successful completion of the program, and it is determined that the continued practice of physical therapy by that individual creates too great a risk to the public health, safety, and welfare, that fact shall be reported to the executive officer of the board and all documents and information pertaining to and supporting that conclusion shall be provided to the executive officer. The matter may be referred for investigation and disciplinary action by the board. Each physical therapist or physical therapy assistant who requests participation in a diversion program shall agree to cooperate with the recovery program designed for him or her. Any failure to comply with that program may result in termination of participation in the program.

The diversion evaluation committee shall inform each participant in the program of the procedures followed in the program, of the rights and responsibilities of a physical therapist or physical therapist assistant in the program, and the possible results of noncompliance with the program.

(c) In addition to the criteria and causes set forth in subdivision (a), the board may set forth in its regulations additional criteria for admission to the program or causes for termination from the program.

SEC. 17. Section 2770.1 of the Business and Professions Code is amended to read:

2770.1. As used in this article:

(a) “Board” means the Board of Registered Nursing.

(b) “Committee” means a diversion evaluation committee created by this article.

(c) “Program manager” means the staff manager of the diversion program, as designated by the executive officer of the board. The program manager shall have background experience in dealing with substance abuse issues.

SEC. 18. Section 2770.7 of the Business and Professions Code is amended to read:

2770.7. (a) The board shall establish criteria for the acceptance, denial, or termination of registered nurses in the diversion program. Only those registered nurses who have voluntarily requested to participate in the diversion program shall participate in the program.

(b) A registered nurse under current investigation by the board may request entry into the diversion program by contacting the board. Prior to authorizing a registered nurse to enter into the diversion program, the board may require the registered nurse under current investigation for any violations of this chapter or any other provision of this code to execute a statement of understanding that states that the registered nurse understands that his or her violations that would otherwise be the basis for discipline may still be investigated and may be the subject of disciplinary action.

(c) If the reasons for a current investigation of a registered nurse are based primarily on the self-administration of any controlled substance or dangerous drug or alcohol under Section 2762, or the illegal possession, prescription, or nonviolent procurement of any controlled substance or dangerous drug for self-administration that does not involve actual, direct harm to the public, the board shall close the investigation without further action if the registered nurse is accepted into the board’s diversion program and successfully completes the requirements of the program. If the registered nurse withdraws or is terminated from the program by a diversion evaluation committee, and the termination is approved by the program manager, the investigation shall be reopened and disciplinary action imposed, if warranted, as determined by the board.

(d) Neither acceptance nor participation in the diversion program shall preclude the board from investigating or continuing to investigate, or taking disciplinary action or continuing to take disciplinary action against, any registered nurse for any unprofessional conduct committed before, during, or after participation in the diversion program.

(e) All registered nurses shall sign an agreement of understanding that the withdrawal or termination from the diversion program at a time when the program manager or diversion evaluation committee determines the licensee presents a threat to the public’s health and safety shall result in the utilization by the board of diversion treatment records in disciplinary or criminal proceedings.

(f) Any registered nurse terminated from the diversion program for failure to comply with program requirements is subject to disciplinary action by the board for acts committed before, during, and after participation in the

diversion program. A registered nurse who has been under investigation by the board and has been terminated from the diversion program by a diversion evaluation committee shall be reported by the diversion evaluation committee to the board.

SEC. 19. Section 2770.8 of the Business and Professions Code is amended to read:

2770.8. A committee created under this article operates under the direction of the diversion program manager. The program manager has the primary responsibility to review and evaluate recommendations of the committee. Each committee shall have the following duties and responsibilities:

(a) To evaluate those registered nurses who request participation in the program according to the guidelines prescribed by the board, and to make recommendations.

(b) To review and designate those treatment services to which registered nurses in a diversion program may be referred.

(c) To receive and review information concerning a registered nurse participating in the program.

(d) To consider in the case of each registered nurse participating in a program whether he or she may with safety continue or resume the practice of nursing.

(e) To call meetings as necessary to consider the requests of registered nurses to participate in a diversion program, and to consider reports regarding registered nurses participating in a program.

(f) To make recommendations to the program manager regarding the terms and conditions of the diversion agreement for each registered nurse participating in the program, including treatment, supervision, and monitoring requirements.

SEC. 20. Section 2770.11 of the Business and Professions Code is amended to read:

2770.11. (a) Each registered nurse who requests participation in a diversion program shall agree to cooperate with the rehabilitation program designed by the committee and approved by the program manager. Any failure to comply with the provisions of a rehabilitation program may result in termination of the registered nurse's participation in a program. The name and license number of a registered nurse who is terminated for any reason, other than successful completion, shall be reported to the board's enforcement program.

(b) If the program manager determines that a registered nurse, who is denied admission into the program or terminated from the program, presents a threat to the public or his or her own health and safety, the program manager shall report the name and license number, along with a copy of all diversion records for that registered nurse, to the board's enforcement program. The board may use any of the records it receives under this subdivision in any disciplinary proceeding.

SEC. 21. Section 2770.12 of the Business and Professions Code is amended to read:

2770.12. (a) After the committee and the program manager in their discretion have determined that a registered nurse has successfully completed the diversion program, all records pertaining to the registered nurse's participation in the diversion program shall be purged.

(b) All board and committee records and records of a proceeding pertaining to the participation of a registered nurse in the diversion program shall be kept confidential and are not subject to discovery or subpoena, except as specified in subdivision (b) of Section 2770.11 and subdivision (c).

(c) A registered nurse shall be deemed to have waived any rights granted by any laws and regulations relating to confidentiality of the diversion program, if he or she does any of the following:

(1) Presents information relating to any aspect of the diversion program during any stage of the disciplinary process subsequent to the filing of an accusation, statement of issues, or petition to compel an examination pursuant to Article 12.5 (commencing with Section 820) of Chapter 1. The waiver shall be limited to information necessary to verify or refute any information disclosed by the registered nurse.

(2) Files a lawsuit against the board relating to any aspect of the diversion program.

(3) Claims in defense to a disciplinary action, based on a complaint that led to the registered nurse's participation in the diversion program, that he or she was prejudiced by the length of time that passed between the alleged violation and the filing of the accusation. The waiver shall be limited to information necessary to document the length of time the registered nurse participated in the diversion program.

SEC. 22. Section 3501 of the Business and Professions Code is amended to read:

3501. As used in this chapter:

(a) "Board" means the Medical Board of California.

(b) "Approved program" means a program for the education of physician assistants that has been formally approved by the committee.

(c) "Trainee" means a person who is currently enrolled in an approved program.

(d) "Physician assistant" means a person who meets the requirements of this chapter and is licensed by the committee.

(e) "Supervising physician" means a physician and surgeon licensed by the board or by the Osteopathic Medical Board of California who supervises one or more physician assistants, who possesses a current valid license to practice medicine, and who is not currently on disciplinary probation for improper use of a physician assistant.

(f) "Supervision" means that a licensed physician and surgeon oversees the activities of, and accepts responsibility for, the medical services rendered by a physician assistant.

(g) "Committee" or "examining committee" means the Physician Assistant Committee.

(h) “Regulations” means the rules and regulations as contained in Chapter 13.8 (commencing with Section 1399.500) of Title 16 of the California Code of Regulations.

(i) “Routine visual screening” means uninvaseive nonpharmacological simple testing for visual acuity, visual field defects, color blindness, and depth perception.

(j) “Program manager” means the staff manager of the diversion program, as designated by the executive officer of the board. The program manager shall have background experience in dealing with substance abuse issues.

SEC. 23. Section 3534.1 of the Business and Professions Code is amended to read:

3534.1. The examining committee shall establish and administer a diversion program for the rehabilitation of physician assistants whose competency is impaired due to the abuse of drugs or alcohol. The examining committee may contract with any other state agency or a private organization to perform its duties under this article. The examining committee may establish one or more diversion evaluation committees to assist it in carrying out its duties under this article. As used in this article, “committee” means a diversion evaluation committee. A committee created under this article operates under the direction of the diversion program manager, as designated by the executive officer of the examining committee. The program manager has the primary responsibility to review and evaluate recommendations of the committee.

SEC. 23. Section 3534.3 of the Business and Professions Code is amended to read:

3534.3. Each committee has the following duties and responsibilities:

(a) To evaluate physician assistants who request participation in the program and to make recommendations to the program manager. In making recommendations, a committee shall consider any recommendations from professional consultants on the admission of applicants to the diversion program.

(b) To review and designate treatment facilities to which physician assistants in the diversion program may be referred, and to make recommendations to the program manager.

(c) The receipt and review of information concerning physician assistants participating in the program.

(d) To call meetings as necessary to consider the requests of physician assistants to participate in the diversion program, to consider reports regarding participants in the program, and to consider any other matters referred to it by the examining committee.

(e) To consider whether each participant in the diversion program may with safety continue or resume the practice of medicine.

(f) To set forth in writing the terms and conditions of the diversion agreement that is approved by the program manager for each physician assistant participating in the program, including treatment, supervision, and monitoring requirements.

(g) To hold a general meeting at least twice a year, which shall be open and public, to evaluate the diversion program's progress, to prepare reports to be submitted to the examining committee, and to suggest proposals for changes in the diversion program.

(h) For the purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, any member of a committee shall be considered a public employee. No examining committee or committee member, contractor, or agent thereof, shall be liable for any civil damage because of acts or omissions which may occur while acting in good faith in a program established pursuant to this article.

SEC. 24. Section 3534.4 of the Business and Professions Code is amended to read:

3534.4. Criteria for acceptance into the diversion program shall include all of the following: (a) the applicant shall be licensed as a physician assistant by the examining committee and shall be a resident of California; (b) the applicant shall be found to abuse dangerous drugs or alcoholic beverages in a manner which may affect his or her ability to practice medicine safely or competently; (c) the applicant shall have voluntarily requested admission to the program or shall be accepted into the program in accordance with terms and conditions resulting from a disciplinary action; (d) the applicant shall agree to undertake any medical or psychiatric examination ordered to evaluate the applicant for participation in the program; (e) the applicant shall cooperate with the program by providing medical information, disclosure authorizations, and releases of liability as may be necessary for participation in the program; and (f) the applicant shall agree in writing to cooperate with all elements of the treatment program designed for him or her.

An applicant may be denied participation in the program if the examining committee, the program manager, or a committee determines that the applicant will not substantially benefit from participation in the program or that the applicant's participation in the program creates too great a risk to the public health, safety, or welfare.

SEC. 25. Section 3534.9 of the Business and Professions Code is amended to read:

3534.9. If the examining committee contracts with any other entity to carry out this section, the executive officer of the examining committee or the program manager shall review the activities and performance of the contractor on a biennial basis. As part of this review, the examining committee shall review files of participants in the program. However, the names of participants who entered the program voluntarily shall remain confidential, except when the review reveals misdiagnosis, case mismanagement, or noncompliance by the participant.

SEC. 26. Section 4371 of the Business and Professions Code is amended to read:

4371. (a) The executive officer of the board shall designate a program manager of the pharmacists recovery program. The program manager shall have background experience in dealing with substance abuse issues.

(b) The program manager shall review the pharmacists recovery program on a quarterly basis. As part of this evaluation, the program manager shall review files of all participants in the pharmacists recovery program.

(c) The program manager shall work with the contractor administering the pharmacists recovery program to evaluate participants in the program according to established guidelines and to develop treatment contracts and evaluate participant progress in the program.

SEC. 27. The responsibilities imposed on a licensing board by this act shall be considered a current operating expense of that board, and shall be paid from the fund generally designated to provide operating expenses for that board, subject to the appropriation provisions applicable to that fund.

Senate Bill No. 1172

CHAPTER 517

An act to amend Section 156.1 of, and to add Sections 315.2 and 315.4 to, the Business and Professions Code, relating to regulatory boards.

[Approved by Governor September 29, 2010. Filed with
Secretary of State September 29, 2010.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1172, Negrete McLeod. Regulatory boards: diversion programs.

(1) Existing law provides for the regulation of specified professions and vocations by various boards, as defined, within the Department of Consumer Affairs. Under existing law, individuals or entities contracting with the department or any board within the department for the provision of services relating to the treatment and rehabilitation of licentiates impaired by alcohol or dangerous drugs are required to retain all records and documents pertaining to those services for 3 years or until they are audited, whichever occurs first. Under existing law, those records and documents are required to be kept confidential and are not subject to discovery or subpoena.

This bill would specify that those records and documents shall be kept for 3 years and kept confidential and are not subject to discovery or subpoena unless otherwise expressly provided by law.

(2) Existing law provides for the licensure and regulation of various healing arts by boards within the Department of Consumer Affairs. Under existing law, these boards are authorized to issue, deny, suspend, and revoke licenses based on various grounds and to take disciplinary action against their licensees.

Existing law establishes diversion and recovery programs to identify and rehabilitate dentists, osteopathic physicians and surgeons, physical therapists, physical therapy assistants, registered nurses, physician assistants, pharmacists and intern pharmacists, veterinarians, and registered veterinary technicians whose competency may be impaired due to, among other things, alcohol and drug abuse.

The bill would require a healing arts board to order a licensee to cease practice if the licensee tests positive for any prohibited substance under the terms of the licensee's probation or diversion program. The bill would also authorize a board to adopt regulations authorizing it to order a licensee on probation or in a diversion program to cease practice for major violations and when the board orders a licensee to undergo a clinical diagnostic evaluation, as specified. The bill would provide that these provisions do not affect the Board of Registered Nursing.

The people of the State of California do enact as follows:

SECTION 1. Section 156.1 of the Business and Professions Code is amended to read:

156.1. (a) Notwithstanding any other provision of law, individuals or entities contracting with the department or any board within the department for the provision of services relating to the treatment and rehabilitation of licentiates impaired by alcohol or dangerous drugs shall retain all records and documents pertaining to those services until such time as these records and documents have been reviewed for audit by the department. These records and documents shall be retained for three years from the date of the last treatment or service rendered to that licentiate, after which time the records and documents may be purged and destroyed by the contract vendor. This provision shall supersede any other provision of law relating to the purging or destruction of records pertaining to those treatment and rehabilitation programs.

(b) Unless otherwise expressly provided by statute or regulation, all records and documents pertaining to services for the treatment and rehabilitation of licentiates impaired by alcohol or dangerous drugs provided by any contract vendor to the department or to any board within the department shall be kept confidential and are not subject to discovery or subpoena.

(c) With respect to all other contracts for services with the department or any board within the department other than those set forth in subdivision (a), the director or chief deputy director may request an examination and audit by the department's internal auditor of all performance under the contract. For this purpose, all documents and records of the contract vendor in connection with such performance shall be retained by such vendor for a period of three years after final payment under the contract. Nothing in this section shall affect the authority of the State Auditor to conduct any examination or audit under the terms of Section 8546.7 of the Government Code.

SEC. 2. Section 315.2 is added to the Business and Professions Code, to read:

315.2. (a) A board, as described in Section 315, shall order a licensee of the board to cease practice if the licensee tests positive for any substance that is prohibited under the terms of the licensee's probation or diversion program.

(b) An order to cease practice under this section shall not be governed by the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) A cease practice order under this section shall not constitute disciplinary action.

(d) This section shall have no effect on the Board of Registered Nursing pursuant to Article 3.1 (commencing with Section 2770) of Chapter 6 of Division 2.

SEC. 3. Section 315.4 is added to the Business and Professions Code, to read:

315.4. (a) A board, as described in Section 315, may adopt regulations authorizing the board to order a licensee on probation or in a diversion program to cease practice for major violations and when the board orders a licensee to undergo a clinical diagnostic evaluation pursuant to the uniform and specific standards adopted and authorized under Section 315.

(b) An order to cease practice under this section shall not be governed by the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) A cease practice order under this section shall not constitute disciplinary action.

(d) This section shall have no effect on the Board of Registered Nursing pursuant to Article 3.1 (commencing with Section 2770) of Chapter 6 of Division 2.

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To: Policy and Advocacy Committee Members

Date: October 12, 2012

From: Rosanne Helms
Legislative Analyst

Telephone: (916) 574-7897

Subject: Proposed 2013 Omnibus Legislation

Upon review, staff has determined that several sections of the Business and Professions Code (BPC) pertaining to the Board of Behavioral Sciences require amendments. These amendments are as follows:

1. Amend BPC Sections 4980.36 and 4999.33 – Child Abuse Assessment and Reporting

Background: Sections 4980.36(d)(2)(C)(i) and 4999.33(d)(9) describe the qualifying degree program required to obtain licensure as an LMFT or an LPCC, if the applicant began graduate study after August 1, 2012. Unlike the requirements for graduate study prior to August 1, 2012, these sections do not specify that the instruction in child abuse assessment and reporting must be at least seven hours in length, and must meet the requirements of BPC Section 28 (which outlines required course content and acceptable course providers).

Recommendation: Because the requirements of BPC Section 28 are still in effect, staff recommends an amendment to Sections 4980.36 and 4999.33 that will clarify that the course must be seven hours in length and meet certain other requirements specified in Section 28. This will make it clearer to both applicants for licensure and board staff that the child abuse assessment and reporting instruction must meet specific requirements.

2. Amend BPC Sections 4980.36 and 4999.33 –Instruction in Severe Mental Illness

Background: Sections 4980.36(e) and 4999.33(d)(6) state that coursework addressing severe mental illness is required for licensure. The law specifies that this coursework may be provided either as credit-level coursework, or through extension programs offered by the degree-granting institution.

Recommendation: Using the term “the degree-granting institution” implies that if the applicant chooses to take this course through an extension program, it must be the extension program of the same school which grants his or her degree. Staff suggests the Board consider an amendment to use the term “an accredited or approved degree granting institution.” This would allow an applicant to take this course from the extension program of a degree granting institution other than his or her own school.

3. Amend BPC Sections 4980.43(b), 4996.23, and 4999.47(a) – Experience Gained as an Independent Contractor

Background: The law allows LMFT, LCSW, and LPCC applicants to gain experience hours as a W-2 employee or a volunteer, but not as an independent contractor. However, the Board gets a significant number of applications for exam eligibility from individuals who are contracting and receiving a 1099 tax form. Some applicants think that because the statute says “employed”, they can be 1099 employees, which is incorrect.

Recommendation: Amend the law to clarify that experience gained as an independent contractor and/or reported on an IRS Form 1099 does not count toward licensure.

4. Amend BPC Sections 4980.72 and 4999.60 – Out-of-State Licensee Experience

Background: Sections 4980.72 and 4999.60 set examination eligibility requirements for out-of-state LMFT and LPCC licensees. One of the requirements for examination eligibility is that the applicant's supervised experience is substantially equivalent to the Board's experience requirements. It states that the Board will consider out-of-state experience obtained during the six year period immediately proceeding the date the applicant obtained his or her out-of-state license.

If a licensee has been licensed for many years out-of-state, it may not be appropriate to look only at experience obtained prior to licensure. The Board's out-of-state LCSW applicants are permitted to count time actively licensed at a rate of 100 hours per month, up to a maximum of 1,200 hours, if they are short hours of supervised experience. This method takes into account experience as a licensee in addition to pre-licensure experience.

Recommendation: Amend the out-of-state licensee experience requirements for LMFT and LPCC applicants to count time actively licensed as experience at a rate of 100 hours per month, up to 1,200 hours.

5. Amend BPC Sections 4989.68 and 4996.3 – LEP and LCSW Delinquency Fee

Background: Sections 4989.68(a)(4) and 4996.3(a)(9) state that the delinquent renewal fee for a license is \$75. However, this is intended to be a maximum amount; Section 1816.7 of the California Code of Regulations (CCR) set the delinquency fees for LEPs and LCSW licensees at \$40 and \$50, respectively. It is standard practice for maximum fee rates to be established in statute, and then to have the current rate to be charged established through regulations. Therefore, clarification is needed that the delinquency fees referenced in 4989.68(a)(4) and 4996.3(a)(9) are maximum fee amounts.

Recommendation: Amend BPC Section 4989.68(a)(4) and 4996.3(a)(9) to state that the delinquency fee shall be a maximum amount of \$75. The Board would continue to charge the current, lower delinquency fees as established in regulations.

6. Amend BPC Section 4996.18 – ASW Supervision

Background: The LMFT and LPCC statutes each have a subsection which states that all applicants and interns must always be under the supervision of a supervisor who is responsible to the Board for compliance with all laws and regulations (§§4980.43(b), 4999.46(e)). This implies that an applicant who is finished gaining hours and is in the exam cycle must continue to be supervised. While this is also true for ASWs, there is no similar language in statute to clarify this.

Recommendation: Amend Section 4996.18 to clarify that applicants and associates must at all times be under the supervision of a supervisor who is responsible to the Board.

7. Amend BPC Section 4999.46 – Telephone Counseling Experience Hours

Background: Section 4999.46 allows an LPCC applicant to count up to 250 hours of experience providing crisis counseling over the telephone.

Recommendation: Staff believes this reference to telephone counseling needs to be updated. LMFT law now references telehealth instead of simply telephone counseling, and allows up to 375 hours to be gained to account for various possible mediums (telephone, internet, etc.) Staff recommends an amendment allowing up to 375 experience hours to be gained counseling via telehealth, as this is already allowed for LMFT applicants.

8. Amend BPC Section 4999.46 – LPC Intern Supervision

Background: Section 4999.46(g) outlines the requirements for direct supervisor contact for LPC interns.

In general, an LPC intern must have at least one hour of direct supervisor contact during each week that experience is credited.

This statute is also in place for MFT interns. In last year's omnibus bill, the LMFT statute was amended to exclude professional enrichment activities, such as attendance at workshops, seminars, training sessions, or conferences, from the direct supervision requirement.

Recommendation: Amend Section 4999.46(g) so that LPC interns are also not required to have direct supervision for attendance at workshops, seminars, training sessions, or conferences.

Recommendation

Direct staff to make any non-substantive changes to the proposed language and, recommend that the Board sponsor legislation to make the proposed changes.

Attachment

Proposed language

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**2013 OMNIBUS BILL
PROPOSED LANGUAGE**

LICENSED MARRIAGE AND FAMILY THERAPISTS

Amend Business and Professions Code (BPC) §4980.36

(a) This section shall apply to the following:

- (1) Applicants for licensure or registration who begin graduate study before August 1, 2012, and do not complete that study on or before December 31, 2018.
- (2) Applicants for licensure or registration who begin graduate study before August 1, 2012, and who graduate from a degree program that meets the requirements of this section.
- (3) Applicants for licensure or registration who begin graduate study on or after August 1, 2012.

(b) To qualify for a license or registration, applicants shall possess a doctor's or master's degree meeting the requirements of this section in marriage, family, and child counseling, marriage and family therapy, couple and family therapy, psychology, clinical psychology, counseling psychology, or counseling with an emphasis in either marriage, family, and child counseling or marriage and family therapy, obtained from a school, college, or university approved by the Bureau for Private Postsecondary Education or accredited by either the Commission on the Accreditation of Marriage and Family Therapy Education or a regional accrediting agency recognized by the United States Department of Education. The board has the authority to make the final determination as to whether a degree meets all requirements, including, but not limited to, course requirements, regardless of accreditation or approval.

(c) A doctor's or master's degree program that qualifies for licensure or registration shall do the following:

(1) Integrate all of the following throughout its curriculum:

(A) Marriage and family therapy principles.

(B) The principles of mental health recovery-oriented care and methods of service delivery in recovery-oriented practice environments, among others.

(C) An understanding of various cultures and the social and psychological implications of socioeconomic position, and an understanding of how poverty and social stress impact an individual's mental health and recovery.

(2) Allow for innovation and individuality in the education of marriage and family therapists.

(3) Encourage students to develop the personal qualities that are intimately related to effective practice, including, but not limited to, integrity, sensitivity, flexibility, insight, compassion, and personal presence.

(4) Permit an emphasis or specialization that may address any one or more of the unique and complex array of human problems, symptoms, and needs of Californians served by marriage and family therapists.

- (5) Provide students with the opportunity to meet with various consumers and family members of consumers of mental health services to enhance understanding of their experience of mental illness, treatment, and recovery.
- (d) The degree described in subdivision (b) shall contain no less than 60 semester or 90 quarter units of instruction that includes, but is not limited to, the following requirements:
- (1) Both of the following:
- (A) No less than 12 semester or 18 quarter units of coursework in theories, principles, and methods of a variety of psychotherapeutic orientations directly related to marriage and family therapy and marital and family systems approaches to treatment and how these theories can be applied therapeutically with individuals, couples, families, adults, including elder adults, children, adolescents, and groups to improve, restore, or maintain healthy relationships.
- (B) Practicum that involves direct client contact, as follows:
- (i) A minimum of six semester or nine quarter units of practicum in a supervised clinical placement that provides supervised fieldwork experience.
- (ii) A minimum of 150 hours of face-to-face experience counseling individuals, couples, families, or groups.
- (iii) A student must be enrolled in a practicum course while counseling clients, except as specified in subdivision (c) of Section 4980.42.
- (iv) The practicum shall provide training in all of the following areas:
- (I) Applied use of theory and psychotherapeutic techniques.
- (II) Assessment, diagnosis, and prognosis.
- (III) Treatment of individuals and premarital, couple, family, and child relationships, including trauma and abuse, dysfunctions, healthy functioning, health promotion, illness prevention, and working with families.
- (IV) Professional writing, including documentation of services, treatment plans, and progress notes.
- (V) How to connect people with resources that deliver the quality of services and support needed in the community.
- (v) Educational institutions are encouraged to design the practicum required by this subparagraph to include marriage and family therapy experience in low-income and multicultural mental health settings.
- (vi) In addition to the 150 hours required in clause (ii), 75 hours of either of the following:
- (I) Client-centered advocacy, as defined in Section 4980.03.
- (II) Face-to-face experience counseling individuals, couples, families, or groups.

(2) Instruction in all of the following:

(A) Diagnosis, assessment, prognosis, and treatment of mental disorders, including severe mental disorders, evidence-based practices, psychological testing, psychopharmacology, and promising mental health practices that are evaluated in peer reviewed literature.

(B) Developmental issues from infancy to old age, including instruction in all of the following areas:

(i) The effects of developmental issues on individuals, couples, and family relationships.

(ii) The psychological, psychotherapeutic, and health implications of developmental issues and their effects.

(iii) Aging and its biological, social, cognitive, and psychological aspects.

(iv) A variety of cultural understandings of human development.

(v) The understanding of human behavior within the social context of socioeconomic status and other contextual issues affecting social position.

(vi) The understanding of human behavior within the social context of a representative variety of the cultures found within California.

(vii) The understanding of the impact that personal and social insecurity, social stress, low educational levels, inadequate housing, and malnutrition have on human development.

(C) The broad range of matters and life events that may arise within marriage and family relationships and within a variety of California cultures, including instruction in all of the following:

(i) ~~Child and adult abuse assessment and reporting. A minimum of seven contact hours of training or coursework in child abuse assessment and reporting as specified in Section 28, and any regulations promulgated thereunder.~~

(ii) Spousal or partner abuse assessment, detection, intervention strategies, and same-gender abuse dynamics.

(iii) Cultural factors relevant to abuse of partners and family members.

(iv) Childbirth, child rearing, parenting, and stepparenting.

(v) Marriage, divorce, and blended families.

(vi) Long-term care.

(vii) End of life and grief.

(viii) Poverty and deprivation.

(ix) Financial and social stress.

(x) Effects of trauma.

- (xi) The psychological, psychotherapeutic, community, and health implications of the matters and life events described in clauses (i) to (x), inclusive.
- (D) Cultural competency and sensitivity, including a familiarity with the racial, cultural, linguistic, and ethnic backgrounds of persons living in California.
- (E) Multicultural development and cross-cultural interaction, including experiences of race, ethnicity, class, spirituality, sexual orientation, gender, and disability, and their incorporation into the psychotherapeutic process.
- (F) The effects of socioeconomic status on treatment and available resources.
- (G) Resilience, including the personal and community qualities that enable persons to cope with adversity, trauma, tragedy, threats, or other stresses.
- (H) Human sexuality, including the study of physiological, psychological, and social cultural variables associated with sexual behavior and gender identity, and the assessment and treatment of psychosexual dysfunction.
- (I) Substance use disorders, co-occurring disorders, and addiction, including, but not limited to, instruction in all of the following:
 - (i) The definition of substance use disorders, co-occurring disorders, and addiction. For purposes of this subparagraph, “co-occurring disorders” means a mental illness and substance abuse diagnosis occurring simultaneously in an individual.
 - (ii) Medical aspects of substance use disorders and co-occurring disorders.
 - (iii) The effects of psychoactive drug use.
 - (iv) Current theories of the etiology of substance abuse and addiction.
 - (v) The role of persons and systems that support or compound substance abuse and addiction.
 - (vi) Major approaches to identification, evaluation, and treatment of substance use disorders, co-occurring disorders, and addiction, including, but not limited to, best practices.
 - (vii) Legal aspects of substance abuse.
 - (viii) Populations at risk with regard to substance use disorders and co-occurring disorders.
 - (ix) Community resources offering screening, assessment, treatment, and followup for the affected person and family.
 - (x) Recognition of substance use disorders, co-occurring disorders, and addiction, and appropriate referral.
 - (xi) The prevention of substance use disorders and addiction.
- (J) California law and professional ethics for marriage and family therapists, including instruction in all of the following areas of study:

- (i) Contemporary professional ethics and statutory, regulatory, and decisional laws that delineate the scope of practice of marriage and family therapy.
- (ii) The therapeutic, clinical, and practical considerations involved in the legal and ethical practice of marriage and family therapy, including, but not limited to, family law.
- (iii) The current legal patterns and trends in the mental health professions.
- (iv) The psychotherapist-patient privilege, confidentiality, the patient dangerous to self or others, and the treatment of minors with and without parental consent.
- (v) A recognition and exploration of the relationship between a practitioner's sense of self and human values and his or her professional behavior and ethics.
- (vi) Differences in legal and ethical standards for different types of work settings.
- (vii) Licensing law and licensing process.

(e) The degree described in subdivision (b) shall, in addition to meeting the requirements of subdivision (d), include instruction in case management, systems of care for the severely mentally ill, public and private services and supports available for the severely mentally ill, community resources for persons with mental illness and for victims of abuse, disaster and trauma response, advocacy for the severely mentally ill, and collaborative treatment. This instruction may be provided either in credit level coursework or through extension programs offered by ~~the~~ an accredited or approved degree-granting institution, as defined in subdivision (b).

(f) The changes made to law by this section are intended to improve the educational qualifications for licensure in order to better prepare future licentiates for practice, and are not intended to expand or restrict the scope of practice for marriage and family therapists.

Amend BPC §4980.43.

(a) Prior to applying for licensure examinations, each applicant shall complete experience that shall comply with the following:

- (1) A minimum of 3,000 hours completed during a period of at least 104 weeks.
- (2) Not more than 40 hours in any seven consecutive days.
- (3) Not less than 1,700 hours of supervised experience completed subsequent to the granting of the qualifying master's or doctoral degree.
- (4) Not more than 1,300 hours of supervised experience obtained prior to completing a master's or doctoral degree.

The applicant shall not be credited with more than 750 hours of counseling and direct supervisor contact prior to completing the master's or doctoral degree.

- (5) No hours of experience may be gained prior to completing either 12 semester units or 18 quarter units of graduate instruction and becoming a trainee except for personal psychotherapy.
- (6) No hours of experience may be gained more than six years prior to the date the application for examination eligibility was filed, except that up to 500 hours of clinical experience gained in

the supervised practicum required by subdivision (c) of Section 4980.37 and subparagraph (B) of paragraph (1) of subdivision (d) of Section 4980.36 shall be exempt from this six-year requirement.

(7) Not more than a combined total of 1,000 hours of experience in the following:

(A) Direct supervisor contact.

(B) Professional enrichment activities. For purposes of this chapter, "professional enrichment activities" include the following:

(i) Workshops, seminars, training sessions, or conferences directly related to marriage and family therapy attended by the applicant that are approved by the applicant's supervisor. An applicant shall have no more than 250 hours of verified attendance at these workshops, seminars, training sessions, or conferences.

(ii) Participation by the applicant in personal psychotherapy, which includes group, marital or conjoint, family, or individual psychotherapy by an appropriately licensed professional. An applicant shall have no more than 100 hours of participation in personal psychotherapy. The applicant shall be credited with three hours of experience for each hour of personal psychotherapy.

(8) Not more than 500 hours of experience providing group therapy or group counseling.

(9) For all hours gained on or after January 1, 2012, not more than 500 hours of experience in the following:

(A) Experience administering and evaluating psychological tests, writing clinical reports, writing progress notes, or writing process notes.

(B) Client centered advocacy.

(10) Not less than 500 total hours of experience in diagnosing and treating couples, families, and children. For up to 150 hours of treating couples and families in conjoint therapy, the applicant shall be credited with two hours of experience for each hour of therapy provided.

(11) Not more than 375 hours of experience providing personal psychotherapy, crisis counseling, or other counseling services via telehealth in accordance with Section 2290.5.

(12) It is anticipated and encouraged that hours of experience will include working with elders and dependent adults who have physical or mental limitations that restrict their ability to carry out normal activities or protect their rights.

This subdivision shall only apply to hours gained on and after January 1, 2010.

(b) All applicants, trainees, and registrants shall be at all times under the supervision of a supervisor who shall be responsible for ensuring that the extent, kind, and quality of counseling performed is consistent with the training and experience of the person being supervised, and who shall be responsible to the board for compliance with all laws, rules, and regulations governing the practice of marriage and family therapy. Supervised experience shall be gained by interns and trainees either as an employee or as a volunteer. The requirements of this chapter regarding gaining hours of experience and supervision are applicable equally to employees and volunteers. Experience shall not be gained by interns or trainees ~~as an~~

~~independent contractor.~~ for work performed as an independent contractor and/or reported on an IRS Form 1099.

(1) If employed, an intern shall provide the board with copies of the corresponding W-2 tax forms for each year of experience claimed upon application for licensure.

(2) If volunteering, an intern shall provide the board with a letter from his or her employer verifying the intern's employment as a volunteer upon application for licensure.

(c) Except for experience gained pursuant to subparagraph (B) of paragraph (7) of subdivision (a), supervision shall include at least one hour of direct supervisor contact in each week for which experience is credited in each work setting, as specified:

(1) A trainee shall receive an average of at least one hour of direct supervisor contact for every five hours of client contact in each setting.

(2) An individual supervised after being granted a qualifying degree shall receive at least one additional hour of direct supervisor contact for every week in which more than 10 hours of client contact is gained in each setting. No more than five hours of supervision, whether individual or group, shall be credited during any single week.

(3) For purposes of this section, "one hour of direct supervisor contact" means one hour per week of face-to-face contact on an individual basis or two hours per week of face-to-face contact in a group.

(4) Direct supervisor contact shall occur within the same week as the hours claimed.

(5) Direct supervisor contact provided in a group shall be provided in a group of not more than eight supervisees and in segments lasting no less than one continuous hour.

(6) Notwithstanding paragraph (3), an intern working in a governmental entity, a school, a college, or a university, or an institution that is both nonprofit and charitable may obtain the required weekly direct supervisor contact via two-way, real-time videoconferencing. The supervisor shall be responsible for ensuring that client confidentiality is upheld.

(7) All experience gained by a trainee shall be monitored by the supervisor as specified by regulation.

(d)(1) A trainee may be credited with supervised experience completed in any setting that meets all of the following:

(A) Lawfully and regularly provides mental health counseling or psychotherapy.

(B) Provides oversight to ensure that the trainee's work at the setting meets the experience and supervision requirements set forth in this chapter and is within the scope of practice for the profession as defined in Section 4980.02.

(C) Is not a private practice owned by a licensed marriage and family therapist, a licensed psychologist, a licensed clinical social worker, a licensed physician and surgeon, or a professional corporation of any of those licensed professions.

(2) Experience may be gained by the trainee solely as part of the position for which the trainee volunteers or is employed.

(e)(1) An intern may be credited with supervised experience completed in any setting that meets both of the following:

(A) Lawfully and regularly provides mental health counseling or psychotherapy.

(B) Provides oversight to ensure that the intern's work at the setting meets the experience and supervision requirements set forth in this chapter and is within the scope of practice for the profession as defined in Section 4980.02.

(2) An applicant shall not be employed or volunteer in a private practice, as defined in subparagraph (C) of paragraph (1) of subdivision (d), until registered as an intern.

(3) While an intern may be either a paid employee or a volunteer, employers are encouraged to provide fair remuneration to interns.

(4) Except for periods of time during a supervisor's vacation or sick leave, an intern who is employed or volunteering in private practice shall be under the direct supervision of a licensee that has satisfied the requirements of subdivision (g) of Section 4980.03. The supervising licensee shall either be employed by and practice at the same site as the intern's employer, or shall be an owner or shareholder of the private practice. Alternative supervision may be arranged during a supervisor's vacation or sick leave if the supervision meets the requirements of this section.

(5) Experience may be gained by the intern solely as part of the position for which the intern volunteers or is employed.

(f) Except as provided in subdivision (g), all persons shall register with the board as an intern in order to be credited for postdegree hours of supervised experience gained toward licensure.

(g) Except when employed in a private practice setting, all postdegree hours of experience shall be credited toward licensure so long as the applicant applies for the intern registration within 90 days of the granting of the qualifying master's or doctoral degree and is thereafter granted the intern registration by the board.

(h) Trainees, interns, and applicants shall not receive any remuneration from patients or clients, and shall only be paid by their employers.

(i) Trainees, interns, and applicants shall only perform services at the place where their employers regularly conduct business, which may include performing services at other locations, so long as the services are performed under the direction and control of their employer and supervisor, and in compliance with the laws and regulations pertaining to supervision. Trainees and interns shall have no proprietary interest in their employers' businesses and shall not lease or rent space, pay for furnishings, equipment or supplies, or in any other way pay for the obligations of their employers.

(j) Trainees, interns, or applicants who provide volunteered services or other services, and who receive no more than a total, from all work settings, of five hundred dollars (\$500) per month as reimbursement for expenses actually incurred by those trainees, interns, or applicants for services rendered in any lawful work setting other than a private practice shall be considered an employee and not an independent contractor. The board may audit applicants who receive reimbursement for expenses, and the applicants shall have the burden of demonstrating that the payments received were for reimbursement of expenses actually incurred.

(k) Each educational institution preparing applicants for licensure pursuant to this chapter shall consider requiring, and shall encourage, its students to undergo individual, marital or conjoint, family, or group counseling or psychotherapy, as appropriate. Each supervisor shall consider, advise, and encourage his or her interns and trainees regarding the advisability of undertaking individual, marital or conjoint, family, or group counseling or psychotherapy, as appropriate. Insofar as it is deemed appropriate and is desired by the applicant, the educational institution and supervisors are encouraged to assist the applicant in locating that counseling or psychotherapy at a reasonable cost.

Amend BPC §4980.72.

(a) This section applies to persons who are licensed outside of California and apply for licensure on or after January 1, 2014.

(b) The board may issue a license to a person who, at the time of submitting an application for a license pursuant to this chapter, holds a valid license in good standing issued by a board of marriage counselor examiners, board of marriage and family therapists, or corresponding authority, of any state or country, if all of the following conditions are satisfied:

(1) The applicant's education is substantially equivalent, as defined in Section 4980.78. The applicant's degree title need not be identical to that required by Section 4980.36 or 4980.37.

(2) The applicant complies with Section 4980.76, if applicable.

(3) The applicant's supervised experience is substantially equivalent to that required for a license under this chapter. ~~The board shall consider hours of experience obtained outside of California during the six-year period immediately preceding the date the applicant initially obtained the license described above.~~ If the applicant has less than 3,000 hours of qualifying supervised experience, time actively licensed as a marriage and family therapist shall be accepted at a rate of 100 hours per month up to a maximum of 1,200 hours.

(4) The applicant passes the California law and ethics examination.

(5) The applicant passes a clinical examination designated by the board. An applicant who obtained his or her license or registration under another jurisdiction may apply for licensure with the board without taking the clinical examination if both of the following conditions are met:

(A) The applicant obtained a passing score on the licensing examination set forth in regulation as accepted by the board.

(B) The applicant's license or registration in that jurisdiction is in good standing at the time of his or her application and has not been revoked, suspended, surrendered, denied, or otherwise restricted or encumbered as a result of any disciplinary proceeding brought by the licensing authority of that jurisdiction.

LICENSED EDUCATIONAL PSYCHOLOGISTS

Amend BPC §4989.68

(a) The board shall assess the following fees relating to the licensure of educational psychologists:

(1) The application fee for examination eligibility shall be one hundred dollars (\$100).

(2) The fee for issuance of the initial license shall be a maximum amount of one hundred fifty dollars (\$150).

(3) The fee for license renewal shall be a maximum amount of one hundred fifty dollars (\$150).

(4) The delinquency fee shall be a maximum amount of seventy-five dollars (\$75). A person who permits his or her license to become delinquent may have it restored only upon payment of all the fees that he or she would have paid if the license had not become delinquent, plus the payment of any and all delinquency fees.

(5) The written examination fee shall be one hundred dollars (\$100). An applicant who fails to appear for an examination, once having been scheduled, shall forfeit any examination fees he or she paid.

(6) The fee for rescoring a written examination shall be twenty dollars (\$20).

(7) The fee for issuance of a replacement registration, license, or certificate shall be twenty dollars (\$20).

(8) The fee for issuance of a certificate or letter of good standing shall be twenty-five dollars (\$25).

(9) The fee for issuance of a retired license shall be forty dollars (\$40).

(b) With regard to all license, examination, and other fees, the board shall establish fee amounts at or below the maximum amounts specified in this chapter.

LICENSED CLINICAL SOCIAL WORKERS

Amend BPC §4996.3.

(a) The board shall assess the following fees relating to the licensure of clinical social workers:

(1) The application fee for registration as an associate clinical social worker shall be seventy-five dollars (\$75).

(2) The fee for renewal of an associate clinical social worker registration shall be seventy-five dollars (\$75).

(3) The fee for application for examination eligibility shall be one hundred dollars (\$100).

(4) The fee for the clinical examination shall be one hundred dollars (\$100). The fee for the California law and ethics examination shall be one hundred dollars (\$100).

(A) An applicant who fails to appear for an examination, after having been scheduled to take the examination, shall forfeit the examination fees.

(B) The amount of the examination fees shall be based on the actual cost to the board of developing, purchasing, and grading each examination and the actual cost to the board of administering each examination. The written examination fees shall be adjusted periodically by regulation to reflect the actual costs incurred by the board.

(5) The fee for rescoring an examination shall be twenty dollars (\$20).

(6) The fee for issuance of an initial license shall be a maximum of one hundred fifty-five dollars (\$155).

(7) The fee for license renewal shall be a maximum of one hundred fifty-five dollars (\$155).

(8) The fee for inactive license renewal shall be a maximum of seventy-seven dollars and fifty cents (\$77.50).

(9) The renewal delinquency fee shall be a maximum of seventy-five dollars (\$75). A person who permits his or her license to expire is subject to the delinquency fee.

(10) The fee for issuance of a replacement registration, license, or certificate shall be twenty dollars (\$20).

(11) The fee for issuance of a certificate or letter of good standing shall be twenty-five dollars (\$25).

(12) The fee for issuance of a retired license shall be forty dollars (\$40).

(b) With regard to license, examination, and other fees, the board shall establish fee amounts at or below the maximum amounts specified in this chapter.

(c) This section shall become operative on January 1, 2014.

Amend BPC §4996.18

(a) A person who wishes to be credited with experience toward licensure requirements shall register with the board as an associate clinical social worker prior to obtaining that experience. The application shall be made on a form prescribed by the board.

(b) An applicant for registration shall satisfy the following requirements:

(1) Possess a master's degree from an accredited school or department of social work.

(2) Have committed no crimes or acts constituting grounds for denial of licensure under Section 480.

(3) Commencing January 1, 2014, have completed training or coursework, which may be embedded within more than one course, in California law and professional ethics for clinical social workers, including instruction in all of the following areas of study:

(A) Contemporary professional ethics and statutes, regulations, and court decisions that delineate the scope of practice of clinical social work.

(B) The therapeutic, clinical, and practical considerations involved in the legal and ethical practice of clinical social work, including, but not limited to, family law.

(C) The current legal patterns and trends in the mental health professions.

(D) The psychotherapist-patient privilege, confidentiality, dangerous patients, and the treatment of minors with and without parental consent.

(E) A recognition and exploration of the relationship between a practitioner's sense of self and human values, and his or her professional behavior and ethics.

(F) Differences in legal and ethical standards for different types of work settings.

(G) Licensing law and process.

(c) An applicant who possesses a master's degree from a school or department of social work that is a candidate for accreditation by the Commission on Accreditation of the Council on Social Work Education shall be eligible, and shall be required, to register as an associate clinical social worker in order to gain experience toward licensure if the applicant has not committed any crimes or acts that constitute grounds for denial of licensure under Section 480. That applicant shall not, however, be eligible for examination until the school or department of social work has received accreditation by the Commission on Accreditation of the Council on Social Work Education.

(d) All applicants and associates shall be at all times under the supervision of a supervisor who shall be responsible for ensuring that the extent, kind, and quality of counseling performed is consistent with the training and experience of the person being supervised, and who shall be responsible to the board for compliance with all laws, rules, and regulations governing the practice of clinical social work.

~~(d)~~(e) Any experience obtained under the supervision of a spouse or relative by blood or marriage shall not be credited toward the required hours of supervised experience. Any experience obtained under the supervision of a supervisor with whom the applicant has a personal relationship that undermines the authority or effectiveness of the supervision shall not be credited toward the required hours of supervised experience.

~~(e)~~(f) An applicant who possesses a master's degree from an accredited school or department of social work shall be able to apply experience the applicant obtained during the time the accredited school or department was in candidacy status by the Commission on Accreditation of the Council on Social Work Education toward the licensure requirements, if the experience meets the requirements of Section 4996.23. This subdivision shall apply retroactively to persons who possess a master's degree from an accredited school or department of social work and who obtained experience during the time the accredited school or department was in candidacy status by the Commission on Accreditation of the Council on Social Work Education.

~~(f)~~(g) An applicant for registration or licensure trained in an educational institution outside the United States shall demonstrate to the satisfaction of the board that he or she possesses a master's of social work degree that is equivalent to a master's degree issued from a school or department of social work that is accredited by the Commission on Accreditation of the Council on Social Work Education. These applicants shall provide the board with a comprehensive evaluation of the degree and shall provide any other documentation the board deems necessary. The board has the authority to make the final determination as to whether a degree meets all requirements, including, but not limited to, course requirements regardless of evaluation or accreditation.

~~(g)~~(h) A registrant shall not provide clinical social work services to the public for a fee, monetary or otherwise, except as an employee.

~~(h)~~(i) A registrant shall inform each client or patient prior to performing any professional services that he or she is unlicensed and is under the supervision of a licensed professional.

Amend BPC §4996.23

The experience required by subdivision (c) of Section 4996.2 shall meet the following criteria:

(a) All persons registered with the board on and after January 1, 2002, shall have at least 3,200 hours of post-master's degree supervised experience providing clinical social work services as permitted by Section 4996.9. At least 1,700 hours shall be gained under the supervision of a licensed clinical social worker. The remaining required supervised experience may be gained under the supervision of a licensed mental health professional acceptable to the board as defined by a regulation adopted by the board. This experience shall consist of the following:

(1) A minimum of 2,000 hours in clinical psychosocial diagnosis, assessment, and treatment, including psychotherapy or counseling.

(2) A maximum of 1,200 hours in client-centered advocacy, consultation, evaluation, and research.

(3) Of the 2,000 clinical hours required in paragraph (1), no less than 750 hours shall be face-to-face individual or group psychotherapy provided to clients in the context of clinical social work services.

(4) A minimum of two years of supervised experience is required to be obtained over a period of not less than 104 weeks and shall have been gained within the six years immediately preceding the date on which the application for licensure was filed.

(5) Experience shall not be credited for more than 40 hours in any week.

(b) "Supervision" means responsibility for, and control of, the quality of clinical social work services being provided. Consultation or peer discussion shall not be considered to be supervision.

(c) (1) Prior to the commencement of supervision, a supervisor shall comply with all requirements enumerated in Section 1870 of Title 16 of the California Code of Regulations and shall sign under penalty of perjury the "Responsibility Statement for Supervisors of an Associate Clinical Social Worker" form.

(2) Supervised experience shall include at least one hour of direct supervisor contact for a minimum of 104 weeks. For purposes of this subdivision, "one hour of direct supervisor contact" means one

hour per week of face-to-face contact on an individual basis or two hours of face-to-face contact in a group conducted within the same week as the hours claimed.

(3) An associate shall receive at least one additional hour of direct supervisor contact for every week in which more than 10 hours of face-to-face psychotherapy is performed in each setting in which experience is gained. No more than five hours of supervision, whether individual or group, shall be credited during any single week.

(4) Group supervision shall be provided in a group of not more than eight supervisees and shall be provided in segments lasting no less than one continuous hour.

(5) Of the 104 weeks of required supervision, 52 weeks shall be individual supervision, and of the 52 weeks of required individual supervision, not less than 13 weeks shall be supervised by a licensed clinical social worker.

(6) Notwithstanding paragraph (2), an associate clinical social worker working for a governmental entity, school, college, or university, or an institution that is both a nonprofit and charitable institution, may obtain the required weekly direct supervisor contact via live two-way videoconferencing. The supervisor shall be responsible for ensuring that client confidentiality is preserved.

(d) The supervisor and the associate shall develop a supervisory plan that describes the goals and objectives of supervision. These goals shall include the ongoing assessment of strengths and limitations and the assurance of practice in accordance with the laws and regulations. The associate shall submit to the board the initial original supervisory plan upon application for licensure.

(e) Experience shall only be gained in a setting that meets both of the following:

(1) Lawfully and regularly provides clinical social work, mental health counseling, or psychotherapy.

(2) Provides oversight to ensure that the associate's work at the setting meets the experience and supervision requirements set forth in this chapter and is within the scope of practice for the profession as defined in Section 4996.9.

(f) Experience shall not be gained until the applicant has been registered as an associate clinical social worker.

(g) Employment in a private practice as defined in subdivision (h) shall not commence until the applicant has been registered as an associate clinical social worker.

(h) A private practice setting is a setting that is owned by a licensed clinical social worker, a licensed marriage and family therapist, a licensed psychologist, a licensed physician and surgeon, or a professional corporation of any of those licensed professions.

(i) Experience shall not be gained by associates for work performed as an independent contractor and/or reported on an IRS Form 1099.

(j)(i) If volunteering, the associate shall provide the board with a letter from his or her employer verifying his or her voluntary status upon application for licensure.

(j)(k) If employed, the associate shall provide the board with copies of his or her W-2 tax forms for each year of experience claimed upon application for licensure.

(k)(l) While an associate may be either a paid employee or volunteer, employers are encouraged to provide fair remuneration to associates.

(l)(m) An associate shall not do the following:

(1) Receive any remuneration from patients or clients and shall only be paid by his or her employer.

(2) Have any proprietary interest in the employer's business.

(3) Lease or rent space, pay for furnishings, equipment, or supplies, or in any other way pay for the obligations of his or her employer.

~~(m)~~(n) An associate, whether employed or volunteering, may obtain supervision from a person not employed by the associate's employer if that person has signed a written agreement with the employer to take supervisory responsibility for the associate's social work services.

~~(n)~~(o) Notwithstanding any other provision of law, associates and applicants for examination shall receive a minimum of one hour of supervision per week for each setting in which he or she is working.

LICENSED PROFESSIONAL CLINICAL COUNSELORS

Amend BPC §4999.33

(a) This section shall apply to the following:

(1) Applicants for examination eligibility or registration who begin graduate study before August 1, 2012, and do not complete that study on or before December 31, 2018.

(2) Applicants for examination eligibility or registration who begin graduate study before August 1, 2012, and who graduate from a degree program that meets the requirements of this section.

(3) Applicants for examination eligibility or registration who begin graduate study on or after August 1, 2012.

(b) To qualify for examination eligibility or registration, applicants shall possess a master's or doctoral degree that is counseling or psychotherapy in content and that meets the requirements of this section, obtained from an accredited or approved institution, as defined in Section 4999.12. For purposes of this subdivision, a degree is "counseling or psychotherapy in content" if it contains the supervised practicum or field study experience described in paragraph (3) of subdivision (c) and, except as provided in subdivision (f), the coursework in the core content areas listed in subparagraphs (A) to (M), inclusive, of paragraph (1) of subdivision (c).

(c) The degree described in subdivision (b) shall contain not less than 60 graduate semester or 90 graduate quarter units of instruction, which shall, except as provided in subdivision (f), include all of the following:

(1) The equivalent of at least three semester units or four and one-half quarter units of graduate study in all of the following core content areas:

(A) Counseling and psychotherapeutic theories and techniques, including the counseling process in a multicultural society, an orientation to wellness and prevention, counseling theories to assist in selection of appropriate counseling interventions, models of counseling consistent with current professional research and practice, development of a personal model of counseling, and multidisciplinary responses to crises, emergencies, and disasters.

(B) Human growth and development across the lifespan, including normal and abnormal behavior and an understanding of developmental crises, disability, psychopathology, and situational and environmental factors that affect both normal and abnormal behavior.

(C) Career development theories and techniques, including career development decisionmaking models and interrelationships among and between work, family, and other life roles and factors, including the role of multicultural issues in career development.

(D) Group counseling theories and techniques, including principles of group dynamics, group process components, group developmental stage theories, therapeutic factors of group work, group leadership styles and approaches, pertinent research and literature, group counseling methods, and evaluation of effectiveness.

(E) Assessment, appraisal, and testing of individuals, including basic concepts of standardized and nonstandardized testing and other assessment techniques, norm-referenced and criterion-referenced assessment, statistical concepts, social and cultural factors related to assessment and evaluation of individuals and groups, and ethical strategies for selecting, administering, and interpreting assessment instruments and techniques in counseling.

(F) Multicultural counseling theories and techniques, including counselors' roles in developing cultural self-awareness, identity development, promoting cultural social justice, individual and community strategies for working with and advocating for diverse populations, and counselors' roles in eliminating biases and prejudices, and processes of intentional and unintentional oppression and discrimination.

(G) Principles of the diagnostic process, including differential diagnosis, and the use of current diagnostic tools, such as the current edition of the Diagnostic and Statistical Manual, the impact of co-occurring substance use disorders or medical psychological disorders, established diagnostic criteria for mental or emotional disorders, and the treatment modalities and placement criteria within the continuum of care.

(H) Research and evaluation, including studies that provide an understanding of research methods, statistical analysis, the use of research to inform evidence-based practice, the importance of research in advancing the profession of counseling, and statistical methods used in conducting research, needs assessment, and program evaluation.

(I) Professional orientation, ethics, and law in counseling, including California law and professional ethics for professional clinical counselors, professional ethical standards and legal considerations, licensing law and process, regulatory laws that delineate the profession's scope of practice, counselor-client privilege, confidentiality, the client dangerous to self or others, treatment of minors with or without parental consent, relationship between practitioner's sense of self and human values, functions and relationships with other human service providers, strategies for collaboration, and advocacy processes needed to address institutional and social barriers that impede access, equity, and success for clients.

(J) Psychopharmacology, including the biological bases of behavior, basic classifications, indications, and contraindications of commonly prescribed psychopharmacological medications so that appropriate referrals can be made for medication evaluations and so that the side effects of those medications can be identified.

(K) Addictions counseling, including substance abuse, co-occurring disorders, and addiction, major approaches to identification, evaluation, treatment, and prevention of substance abuse and addiction, legal and medical aspects of substance abuse, populations at risk, the role of support persons, support systems, and community resources.

(L) Crisis or trauma counseling, including crisis theory; multidisciplinary responses to crises, emergencies, or disasters; cognitive, affective, behavioral, and neurological effects associated with trauma; brief, intermediate, and long-term approaches; and assessment strategies for clients in crisis and principles of intervention for individuals with mental or emotional disorders during times of crisis, emergency, or disaster.

(M) Advanced counseling and psychotherapeutic theories and techniques, including the application of counseling constructs, assessment and treatment planning, clinical interventions, therapeutic relationships, psychopathology, or other clinical topics.

(2) In addition to the course requirements described in paragraph (1), 15 semester units or 22.5 quarter units of advanced coursework to develop knowledge of specific treatment issues or special populations.

(3) Not less than six semester units or nine quarter units of supervised practicum or field study experience, or the equivalent, in a clinical setting that provides a range of professional clinical counseling experience, including the following:

(A) Applied psychotherapeutic techniques.

(B) Assessment.

(C) Diagnosis.

(D) Prognosis.

(E) Treatment.

(F) Issues of development, adjustment, and maladjustment.

(G) Health and wellness promotion.

(H) Professional writing including documentation of services, treatment plans, and progress notes.

(I) How to find and use resources.

(J) Other recognized counseling interventions.

(K) A minimum of 280 hours of face-to-face supervised clinical experience counseling individuals, families, or groups.

(d) The 60 graduate semester units or 90 graduate quarter units of instruction required pursuant to subdivision (c) shall, in addition to meeting the requirements of subdivision (c), include instruction in all of the following:

(1) The understanding of human behavior within the social context of socioeconomic status and other contextual issues affecting social position.

(2) The understanding of human behavior within the social context of a representative variety of the cultures found within California.

(3) Cultural competency and sensitivity, including a familiarity with the racial, cultural, linguistic, and ethnic backgrounds of persons living in California.

- (4) An understanding of the effects of socioeconomic status on treatment and available resources.
- (5) Multicultural development and cross-cultural interaction, including experiences of race, ethnicity, class, spirituality, sexual orientation, gender, and disability and their incorporation into the psychotherapeutic process.
- (6) Case management, systems of care for the severely mentally ill, public and private services for the severely mentally ill, community resources for victims of abuse, disaster and trauma response, advocacy for the severely mentally ill, and collaborative treatment. The instruction required in this paragraph may be provided either in credit level coursework or through extension programs offered by the an accredited or approved degree-granting institution, as defined in section 4999.12.
- (7) Human sexuality, including the study of the physiological, psychological, and social cultural variables associated with sexual behavior, gender identity, and the assessment and treatment of psychosexual dysfunction.
- (8) Spousal or partner abuse assessment, detection, intervention strategies, and same-gender abuse dynamics.
- (9) ~~Child abuse assessment and reporting.~~ A minimum of seven contact hours of training or coursework in child abuse assessment and reporting as specified in Section 28, and any regulations promulgated thereunder.
- (10) Aging and long-term care, including biological, social, cognitive, and psychological aspects of aging. This coursework shall include instruction on the assessment and reporting of, as well as treatment related to, elder and dependent adult abuse and neglect.
- (e) A degree program that qualifies for licensure under this section shall do all of the following:
- (1) Integrate the principles of mental health recovery-oriented care and methods of service delivery in recovery-oriented practice environments.
 - (2) Integrate an understanding of various cultures and the social and psychological implications of socioeconomic position.
 - (3) Provide the opportunity for students to meet with various consumers and family members of consumers of mental health services to enhance understanding of their experience of mental illness, treatment, and recovery.
- (f) (1) An applicant whose degree is deficient in no more than three of the required areas of study listed in subparagraphs (A) to (M), inclusive, of paragraph (1) of subdivision (c) may satisfy those deficiencies by successfully completing post-master's or postdoctoral degree coursework at an accredited or approved institution, as defined in Section 4999.12.
- (2) Coursework taken to meet deficiencies in the required areas of study listed in subparagraphs (A) to (M), inclusive, of paragraph (1) of subdivision (c) shall be the equivalent of three semester units or four and one-half quarter units of study.
 - (3) The board shall make the final determination as to whether a degree meets all requirements, including, but not limited to, course requirements, regardless of accreditation.

Amend BPC §4999.46

(a) To qualify for the licensure examination specified by paragraph (2) of subdivision (a) of Section 4999.53, applicants shall complete clinical mental health experience under the general supervision of an approved supervisor as defined in Section 4999.12.

(b) The experience shall include a minimum of 3,000 postdegree hours of supervised clinical mental health experience related to the practice of professional clinical counseling, performed over a period of not less than two years (104 weeks), which shall include:

(1) Not more than 40 hours in any seven consecutive days.

(2) Not less than 1,750 hours of direct counseling with individuals or groups in a setting described in Section 4999.44 using a variety of psychotherapeutic techniques and recognized counseling interventions within the scope of practice of licensed professional clinical counselors.

(3) Not more than 500 hours of experience providing group therapy or group counseling.

(4) ~~Not more than 250 hours of experience providing counseling or crisis counseling on the telephone. Not more than 375 hours of experience providing personal psychotherapy, crisis counseling, or other counseling services via telehealth in accordance with Section 2290.5.~~

(5) Not less than 150 hours of clinical experience in a hospital or community mental health setting, as defined in Section 1820 of Title 16 of the California Code of Regulations.

(6) Not more than a combined total of 1,250 hours of experience in the following related activities:

(A) Direct supervisor contact.

(B) Client centered advocacy.

(C) Not more than 250 hours of experience administering tests and evaluating psychological tests of clients, writing clinical reports, writing progress notes, or writing process notes.

(D) Not more than 250 hours of verified attendance at workshops, seminars, training sessions, or conferences directly related to professional clinical counseling that are approved by the applicant's supervisor.

(c) No hours of clinical mental health experience may be gained more than six years prior to the date the application for examination eligibility was filed.

(d) An applicant shall register with the board as an intern in order to be credited for postdegree hours of experience toward licensure. Postdegree hours of experience shall be credited toward licensure, provided that the applicant applies for intern registration within 90 days of the granting of the qualifying degree and is registered as an intern by the board.

(e) All applicants and interns shall be at all times under the supervision of a supervisor who shall be responsible for ensuring that the extent, kind, and quality of counseling performed is consistent with the training and experience of the person being supervised, and who shall be responsible to the board for compliance with all laws, rules, and regulations governing the practice of professional clinical counseling.

(f) Experience obtained under the supervision of a spouse or relative by blood or marriage shall not be credited toward the required hours of supervised experience. Experience obtained under the supervision of a supervisor with whom the applicant has had or currently has a personal, professional, or business relationship that undermines the authority or effectiveness of the supervision shall not be credited toward the required hours of supervised experience.

(g) Except for experience gained pursuant to (b)(6)(D), Supervision shall include at least one hour of direct supervisor contact in each week for which experience is credited in each work setting.

(1) No more than five hours of supervision, whether individual or group, shall be credited during any single week.

(2) An intern shall receive at least one additional hour of direct supervisor contact for every week in which more than 10 hours of face-to-face psychotherapy is performed in each setting in which experience is gained.

(3) For purposes of this section, "one hour of direct supervisor contact" means one hour of face-to-face contact on an individual basis or two hours of face-to-face contact in a group of not more than eight persons in segments lasting no less than one continuous hour.

(4) Notwithstanding paragraph (3), an intern working in a governmental entity, a school, a college, or a university, or an institution that is both nonprofit and charitable, may obtain the required weekly direct supervisor contact via two-way, real-time videoconferencing. The supervisor shall be responsible for ensuring that client confidentiality is upheld.

(h) This section shall become operative on January 1, 2014.

Amend BPC §4999.47

(a) Clinical counselor trainees, interns, and applicants shall perform services as an employee or as a volunteer. The requirements of this chapter regarding gaining hours of clinical mental health experience and supervision are applicable equally to employees and volunteers. Experience shall not be gained by clinical counselor interns or trainees ~~as an independent contractor~~ for work performed as an independent contractor and/or reported on an IRS Form 1099.

(1) If employed, a clinical counselor intern shall provide the board with copies of the corresponding W-2 tax forms for each year of experience claimed upon application for licensure as a professional clinical counselor.

(2) If volunteering, a clinical counselor intern shall provide the board with a letter from his or her employer verifying the intern's employment as a volunteer upon application for licensure as a professional clinical counselor.

(b) Clinical counselor trainees, interns, and applicants shall not receive any remuneration from patients or clients, and shall only be paid by their employers.

(c) While an intern may be either a paid employee or a volunteer, employers are encouraged to provide fair remuneration.

(d) Clinical counselor trainees, interns, and applicants who provide voluntary services or other services, and who receive no more than a total, from all work settings, of five hundred dollars

(\$500) per month as reimbursement for expenses actually incurred by those clinical counselor trainees, interns, and applicants for services rendered in any lawful work setting other than a private practice shall be considered an employee and not an independent contractor.

(e) The board may audit an intern or applicant who receives reimbursement for expenses and the intern or applicant shall have the burden of demonstrating that the payments received were for reimbursement of expenses actually incurred.

(f) Clinical counselor trainees, interns, and applicants shall only perform services at the place where their employer regularly conducts business and services, which may include other locations, as long as the services are performed under the direction and control of the employer and supervisor in compliance with the laws and regulations pertaining to supervision. Clinical counselor trainees, interns, and applicants shall have no proprietary interest in the employer's business.

(g) Each educational institution preparing applicants for licensure pursuant to this chapter shall consider requiring, and shall encourage, its students to undergo individual, marital or conjoint, family, or group counseling or psychotherapy, as appropriate. Each supervisor shall consider, advise, and encourage his or her interns and clinical counselor trainees regarding the advisability of undertaking individual, marital or conjoint, family, or group counseling or psychotherapy, as appropriate. Insofar as it is deemed appropriate and is desired by the applicant, the educational institution and supervisors are encouraged to assist the applicant in locating that counseling or psychotherapy at a reasonable cost.

Amend BPC §4999.60.

(a) This section applies to persons who are licensed outside of California and apply for examination eligibility on or after January 1, 2014.

(b) The board may issue a license to a person who, at the time of submitting an application for a license pursuant to this chapter, holds a valid license as a professional clinical counselor, or other counseling license that allows the applicant to independently provide clinical mental health services, in another jurisdiction of the United States if all of the following conditions are satisfied:

(1) The applicant's education is substantially equivalent, as defined in Section 4999.62.

(2) The applicant complies with subdivision (b) of Section 4999.40, if applicable.

(3) The applicant's supervised experience is substantially equivalent to that required for a license under this chapter. ~~The board shall consider hours of experience obtained outside of California during the six-year period immediately preceding the date the applicant initially obtained the license described above. If the applicant has less than 3,000 hours of qualifying supervised experience, time actively licensed as a professional clinical counselor shall be accepted at a rate of 100 hours per month up to a maximum of 1,200 hours.~~

(4) The applicant passes the examinations required to obtain a license under this chapter. An applicant who obtained his or her license or registration under another jurisdiction may apply for licensure with the board without taking the clinical examination if both of the following conditions are met:

(A) The applicant obtained a passing score on the licensing examination set forth in regulation as accepted by the board.

(B) The applicant's license or registration in that jurisdiction is in good standing at the time of his or her application and has not been revoked, suspended, surrendered, denied, or otherwise restricted or encumbered as a result of any disciplinary proceeding brought by the licensing authority of that jurisdiction.

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To: Board Members **Date:** October 18, 2012

From: Steve Sodergren **Telephone:** (916) 574-7847
Assistant Executive Officer

Subject: Discussion and Possible Rulemaking Action to Require All Applicants to
Submit a National Practitioner Data Bank (NPDB) Inquiry Result

Background

During the 2012 Sunset Review process the Senate Business, Professions and Economic Development Committee requested an explanation from the Board as to why the Board was not currently using the National Practitioner Data Bank (NPDB) to conduct background checks on licensure applicants. The Board indicated that it has an interest in using this resource as another tool to conduct background checks and was exploring options to best incorporate its use. During the July 19, 2012 Policy and Advocacy Committee meeting it was decided that it would be beneficial to require applicants to submit a NPDB self-query to the Board when applying for licensure. At the August 2012 the board meeting the staff was asked to perform additional research in order for the Policy and Advocacy Committee to continuing it discussion.

Analysis

An initial survey of the healing arts boards within the Department of Consumer Affairs (DCA) confirmed that, out of the nine boards which responded, four boards currently utilize the NPDB. (Attachment A) Three of these boards perform queries on only certain applicants; i.e. out of state. The Board of Pharmacy requires that all applicants perform a self query. Many boards, even those who utilize the NPDB, rely on professional associations to access background information on practitioners; i.e. Federation of Podiatric Medical Boards, Association of State and Provincial Psychology Boards.

Between September 1, 1990 and January 29, 2012 there were approximately 21,072 reports submitted with the NPDB for mental health professions. (Attachment B) Within that period, 2,359 reports were filed by entities in California including the Board. Most of the reports (16,925) were filed due to adverse actions in regards to licensure, clinical privileges, professional society memberships, and peer review organizations. There appears to be a steady increase in the amount of reports being submitted as additional entities begin to comply with the mandatory reporting requirements.

At the August 2012 board meeting concern was expressed in regards to the possibly increased workload that this process would have on the Board. Initially this would require the Board to establish

regulations and create or amend application forms. Once established the procedure for reviewing the query results would follow the same enforcement procedures that exist for our fingerprinting review. Determining the extent as to how this could increase the Board workload is difficult because it is unknown how many queries the Board might receive which would reveal an adverse action.

Recommendation

The committee should conduct an open discussion as to whether staff should draft language to require licensure applicants to submit a NPDB query result and whether those requirements should apply to all applicants or only those applicants that have been licensed within a jurisdiction other than California.

Attachments

- A. National Practitioner Data Bank Usage by Health Arts Boards in California
- B. National Practitioner Data Bank Reports Submitted
- C. National Practitioner Data Bank Reports Submitted by California

**NATIONAL PRACTITIONER DATA BANK USAGE
BY HEALING ARTS BOARDS IN CALIFORNIA**

(Not all Boards are listed)

BOARD	USE THE DATA BANK?	
Dental Board	Yes	All "licensed by credential" applicants are queried. The Board completes approximately two hundred queries a year.
Medical Board	Yes	Out of state applicants and reinstatements are queried. The Board also relies on a database maintained by the Federation of State Medical Boards as well as the American Medical Association.
Board of Pharmacy	YES	All applicants perform a self query.
Physical Therapy Board	NO	
Board of Podiatric Medicine	NO	The Board accesses information from the Federation of Podiatric Medical Boards.
Board of Psychology	NO	The Board accesses information from the Association of State and Provincial Psychology Boards.
Board of Registered Nursing	NO	The Board accesses information from the National Council of State Boards of Nursing.
Respiratory Care Board	YES	The Board queries all out of state applicants.
Board of Vocational Nursing and Psychiatric Technicians	NO	

**National Practitioner Data Bank Reports Submitted
September 1, 1990 – January 29, 2012
(Professions not available the entire period are noted)**

	Medical Malpractice Reports	Licensure, Clinical Privileges, Professional Society Membership, and Peer Review Organization Reports	Medicare/Medicaid Exclusion Reports	Total Reports
Art/Recreation Therapists (11/22/1999)	2	16	0	18
Clinical Psychologists (9/9/2002)	858	906	435	2199
Mental Health Counselor	161	830	0	991
Marriage & Family Therapist (9/9/2002)	24	523	0	547
Professional Counselor	190	3585	467	4242
Professional Counselor, Alcohol	9	196	0	205
Professional Counselor, Marriage & Family	176	343	0	519
Professional Counselor, Substance Abuse	22	1944	0	1966
Psychiatric Technician	15	916	0	931
Psychologist Assistant	0	144	0	144
Psychologist (9/9/2002)	346	2179	263	2788
School Psychologist (9/9/2002)	1	16	0	17
Social Worker	197	5327	81	5605
TOTAL	2001	16925	1246	21072

**National Practitioner Data Bank Reports
Submitted by California Entities
September 1, 1990 – January 29, 2012
(Professions not available the entire period are noted)**

	Medical Malpractice Reports	Licensure, Clinical Privileges, Professional Society Membership, and Peer Review Organization Reports	Medicare/Medicaid Exclusion Reports	Total Reports
Art/Recreation Therapists (11/22/1999)	0	0	0	0
Clinical Psychologists (9/9/2002)	189	183	148	520
Mental Health Counselor	32	1	0	33
Marriage & Family Therapist (9/9/2002)	8	261	0	269
Professional Counselor	32	2	28	62
Professional Counselor, Alcohol	0	0	0	0
Professional Counselor, Marriage & Family	111	86	0	197
Professional Counselor, Substance Abuse	2	0	0	2
Psychiatric Technician	3	775	0	778
Psychologist Assistant	0	24	0	24
Psychologist (9/9/2002)	70	154	69	293
School Psychologist (9/9/2002)	0	3	0	3
Social Worker	24	149	5	178
TOTAL	471	1638	250	2359

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To: Committee Members

Date: October 12, 2012

From: Rosanne Helms
Legislative Analyst

Telephone: (916) 574-7897

Subject: LPC Treatment of Couples or Families

Under current law, professional clinical counselor licensees (LPCCs), interns (LPC interns), and trainees may not treat couples or families unless they complete certain specified additional training and education. This additional training and education is as follows (Business and Professions Code (BPC) §4999.20):

- 1) Either six semester or nine quarter units specifically focused on theory and application of marriage and family therapy, or a named specialization or emphasis area of the qualifying degree in marriage and family therapy, marital and family therapy, marriage, family, and child counseling, or couple and family therapy;
- 2) At least 500 hours of documented supervised experience working directly with couples, families or children; and
- 3) In each renewal cycle, completion of at least six hours of continuing education specific to marriage and family therapy.

In addition, Section 1820.5 of the California Code of Regulations (CCR) outlines exemptions for LPC licensees, interns and trainees to allow them to treat couples or families if they are in the process of gaining their required 500 hours of supervised experience in order to do so.

The Board is now in the process of issuing its first LPC licenses and registrations. As these new practitioners attempt to gain the experience and education necessary to treat couples or families, the following questions have been frequently posed to staff regarding the requirements of Section 1820.5.

- 1) What documentation of the additional education/experience is needed?
- 2) Does an LPCC licensee need to meet the additional education and experience requirements in a particular order?
- 3) Must the supervised experience be obtained from an approved supervisor?

1) What documentation of the additional education/experience is needed?

There is no procedure outlined in statute for a licensee or registrant to apply to be able to treat couples or families based on their completion of the requirements in 4999.20. A licensee or registrant may decide at any time that they would like to pursue the additional education and experience. Once they are finished, there is no form that they need to send to the Board; they may simply begin treating couples or families.

The Board may choose to audit a licensee or registrant who is treating couples or families in certain cases to see if they meet the requirements. For example, the Board may check for compliance if a complaint were filed against the practitioner, or if he or she applied to become a Board-approved supervisor and was planning on supervising MFT interns.

These scenarios raise the question of how a LPCC licensee or intern who has met the requirements to treat couples or families should document their experience and training, in case they are ever asked to provide it as evidence to the Board.

Board staff is currently working on a voluntary form that the practitioner may fill out and keep for his or her records. This form will be designed to assist with having all of the necessary information about additional education and experience in one place in case the Board ever requests it.

In addition, staff recommends an amendment to CCR Section 1820.5. This amendment would state that LPCC licensees, interns, and trainees must maintain records of their additional education and experience. Placing this requirement in regulation clarifies that the practitioner is responsible for keeping such records. This requirement is similar to the current requirement that licensees maintain records of their continuing education coursework in case of a Board audit.

2) Does an LPCC licensee need to meet the additional education and experience requirements in a particular order?

Currently, CCR §1820.5 states that an LPCC is exempt from the additional requirements to treat couples or families if:

- a) He or she is in the process of gaining supervised experience to comply with the additional requirements;
- b) He or she is gaining supervised experience from an LMFT or an LPCC who already meets the additional requirements;
- c) He or she **has completed** the required six semester/nine quarter units focused on the theory and application of marriage and family therapy or a named specialization or emphasis area in marriage and family therapy, marital and family therapy, marriage, family and child counseling, or couple and family therapy; and
- d) Completes at least six hours of continuing education specific to marriage and family therapy in each renewal cycle.

The term “has completed” in item (c) above implies that an LPCC licensee gaining the supervised experience required to treat couples or families must **first** complete the additional required education specific to marriage and family therapy. However, CCR §1820.5 makes no

specification of the order of this requirement for LPC interns or trainees; the requirement is only for licensees.

It seems inequitable to allow an LPC intern to gain experience working with couples or families either before or while he or she is obtaining the required additional education, but require a licensed LPCC to wait until completing the education before beginning to gain the experience. In addition, it may create a hardship for LPCCs who had earned the supervised experience in the past, if they had not first completed the required MFT coursework. In such a case, the LPCC would technically meet the requirements, but would need to re-do the supervised experience because it was not completed in the “correct” order.

If it is not the intent of the Board that LPCCs must gain supervised experience to treat couples or families after completing the required education, staff suggests that CCR §1820.5(b)(3)(A) be amended to change the term “has completed” to “completes.”

3) Must the supervised experience be obtained from an approved supervisor?

CCR Section 1820.5 states that the supervised experience that is required for an LPCC or LPC intern or trainee to treat couples or families must be gained under the supervision of either a marriage and family therapist, or under a licensee who meets all of the requirements to treat couples or families specified in BPC §4999.20.

The code is silent on whether this supervisor must be a Board-approved supervisor.

An approved supervisor is defined in BPC §4999.12 of the LPCC statute as someone who meets the following specifications:

- Has a current, valid license not under suspension or probation;
- Has not provided therapeutic services to the trainee or intern;
- Has received professional training in supervision; and
- Has documented two years of clinical experience as an LPCC, LMFT, LCSW, licensed clinical psychologist, or licensed physician and surgeon certified in psychiatry by the American Board of Psychiatry and Neurology.

It is not known if the law’s intent was for the supervised experience required to treat couples or families be gained under an approved supervisor, or if it was the intent to only require a supervisor be able to treat couples or families his or her self. If the intent is for the supervisor to be an approved supervisor, staff suggests a clarifying amendment stating this.

Recommendation

Conduct an open discussion regarding each of the three topics discussed above. Direct staff to make any discussed changes and any nonsubstantive changes to the attached amendments, and submit to the Board for approval to run as a regulatory proposal.

Attachments

Attachment A: Proposed Language

Attachment B: BPC §4999.20 (Statute related to LPCC treatment of couples or families)

Attachment C: BPC §4999.12(h) (Definition of an approved supervisor) and CCR §1821 (Requirements for supervisors)

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ATTACHMENT A **PROPOSED AMENDMENTS** **LPC REQUIREMENTS TO WORK WITH COUPLES AND FAMILIES**

§1820.5 EXPERIENCE WORKING DIRECTLY WITH COUPLES, FAMILIES, OR CHILDREN

(a) Professional clinical counselor interns and clinical counselor trainees shall be exempt from Section 4999.20 (a)(3) of the Code if the intern or trainee meets both of the following requirements:

(1) Is gaining supervised experience to comply with 4999.20(a)(3)(B), 4999.32(c)(3)(I), or 4999.33(c)(3)(K) of the Code; and,

(2) The supervised experience is gained under the direct supervision of a marriage and family therapist or a licensed professional clinical counselor who meets all requirements specified in Section 4999.20 (a)(3) of the Code, and who is an approved supervisor, as defined in Section 4999.12 of the Code.

(b) A licensed professional clinical counselor shall be exempt from Section 4999.20 (a)(3) of the Code if the licensee meets all of the following requirements:

(1) Is gaining supervised experience to comply with Section 4999.20(a)(3)(B) of the Code;

(2) The supervised experience is gained under the direct supervision of a marriage and family therapist or a licensee who meets all requirements specified in Section 4999.20 (a)(3) of the Code, and who is an approved supervisor, as defined in Section 4999.12 of the Code.

(3) The licensed professional clinical counselor gaining the hours of supervised work experience to comply with Section 4999.20(a)(3) of the Code meets both of the following requirements:

(A) Has completed Completes, beyond the minimum training and education, six semester units or nine quarter units specifically focused on the theory and application of marriage and family therapy or a named specialization or emphasis area on the qualifying degree in marriage and family therapy; marital and family therapy; marriage, family, and child counseling; or couple and family therapy.

(B) Completes a minimum of six hours of continuing education specific to marriage and family therapy, completed in each renewal cycle.

(c) A licensed professional clinical counselor, and professional clinical counselor interns and trainees, who have met the requirements to treat couples and families as specified in 4999.20(a)(3) shall maintain records of completion of these requirements, and shall make these records available to the board for auditing purposes upon request.

NOTE: Authority cited: Sections 4990.20 and 4999.20, Business and Professions Code. Reference: Sections 4990.20, 4999.20, 4999.32, and 4999.33 Business and Professions Code.

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ATTACHMENT B LPCC TREATMENT OF COUPLES OR FAMILIES

BUSINESS AND PROFESSIONS CODE (BPC) §4999.20. SCOPE OF PRACTICE; TREATMENT OF COUPLES OR FAMILIES

(a) (1) “Professional clinical counseling” means the application of counseling interventions and psychotherapeutic techniques to identify and remediate cognitive, mental, and emotional issues, including personal growth, adjustment to disability, crisis intervention, and psychosocial and environmental problems. “Professional clinical counseling” includes conducting assessments for the purpose of establishing counseling goals and objectives to empower individuals to deal adequately with life situations, reduce stress, experience growth, change behavior, and make well-informed rational decisions.

(2) “Professional clinical counseling” is focused exclusively on the application of counseling interventions and psychotherapeutic techniques for the purposes of improving mental health, and is not intended to capture other, nonclinical forms of counseling for the purposes of licensure. For the purposes of this paragraph, “nonclinical” means nonmental health.

(3) “Professional clinical counseling” does not include the assessment or treatment of couples or families unless the professional clinical counselor has completed all of the following additional training and education, beyond the minimum training and education required for licensure:

(A) One of the following:

(i) Six semester units or nine quarter units specifically focused on the theory and application of marriage and family therapy.

(ii) A named specialization or emphasis area on the qualifying degree in marriage and family therapy; marital and family therapy; marriage, family, and child counseling; or couple and family therapy.

(B) No less than 500 hours of documented supervised experience working directly with couples, families, or children.

(C) A minimum of six hours of continuing education specific to marriage and family therapy, completed in each license renewal cycle.

(4) “Professional counseling” does not include the provision of clinical social work services.

(b) “Counseling interventions and psychotherapeutic techniques” means the application of cognitive, affective, verbal or nonverbal, systemic or holistic counseling strategies that include principles of development, wellness, and maladjustment that reflect a pluralistic society. These

interventions and techniques are specifically implemented in the context of a professional clinical counseling relationship and use of a variety of counseling theories and approaches.

(c) "Assessment" means selecting, administering, scoring, and interpreting tests, instruments, and other tools and methods designed to measure an individual's attitudes, abilities, aptitudes, achievements, interests, personal characteristics, disabilities, and mental, emotional, and behavioral concerns and development and the use of methods and techniques for understanding human behavior in relation to coping with, adapting to, or ameliorating changing life situations, as part of the counseling process. "Assessment" shall not include the use of projective techniques in the assessment of personality, individually administered intelligence tests, neuropsychological testing, or utilization of a battery of three or more tests to determine the presence of psychosis, dementia, amnesia, cognitive impairment, or criminal behavior.

(d) Professional clinical counselors shall refer clients to other licensed health care professionals when they identify issues beyond their own scope of education, training, and experience.

ATTACHMENT C LPCC SUPERVISORS

BUSINESS AND PROFESSIONS CODE (BPC) §4999.12 (h) “Approved supervisor” means an individual who meets the following requirements:

- (1) Has documented two years of clinical experience as a licensed professional clinical counselor, licensed marriage and family therapist, licensed clinical psychologist, licensed clinical social worker, or licensed physician and surgeon who is certified in psychiatry by the American Board of Psychiatry and Neurology.
- (2) Has received professional training in supervision.
- (3) Has not provided therapeutic services to the clinical counselor trainee or intern.
- (4) Has a current and valid license that is not under suspension or probation.

CALIFORNIA CODE OF REGULATIONS (CCR) TITLE 16, §1821

§1821. REQUIREMENTS FOR SUPERVISORS

(a) Any person supervising an intern (hereinafter "supervisor") within California shall comply with the requirements set forth in this section.

(b) Prior to the commencement of any counseling or supervision, the supervisor shall sign under penalty of perjury the “Responsibility Statement for Supervisors of a Professional Clinical Counselor Intern” (form No.1800 37A-643, New 3/10), hereby incorporated by reference, requiring that:

(1) The supervisor possesses and maintains a current valid California license as either a professional clinical counselor, marriage and family therapist, licensed clinical social worker, licensed psychologist, or physician who is certified in psychiatry as specified in Section 4999.12 (h) of the Code and has been so licensed in California for at least two years prior to commencing any supervision.

(2) A supervisor who is not licensed as a professional clinical counselor, shall have sufficient experience, training, and education in professional clinical counseling to competently practice professional clinical counseling in California.

(3) The supervisor keeps himself or herself informed of developments in professional clinical counseling and in California law governing the practice of professional clinical counseling.

(4) The supervisor has and maintains a current license in good standing and will immediately notify the intern of any disciplinary action, including revocation or suspension, even if stayed, probation terms, inactive license status, or any lapse in licensure that affects the supervisor's ability or right to supervise.

(5) The supervisor has practiced psychotherapy or provided direct supervision of trainees, interns, or associate clinical social workers who perform psychotherapy for at least two (2) years within the five (5) year period immediately preceding any supervision.

(6) The supervisor has had sufficient experience, training, and education in the area of clinical supervision to competently supervise interns.

(A) Persons licensed by the board who provide supervision shall complete a minimum of six (6) hours of supervision training or coursework in each renewal period while providing supervision. This training or coursework may apply towards the continuing education requirements set forth in Sections 4980.54, 4996.22, and 4999.76 of the Code.

(B) Persons licensed by the board who provide supervision and who have not met requirements of subsection (A), shall complete a minimum of six (6) hours of supervision training or coursework within sixty (60) days of commencement of supervision.

(7) The supervisor knows and understands the laws and regulations pertaining to both the supervision of interns and the experience required for licensure as a professional clinical counselor.

(8) The supervisor shall ensure that the extent, kind, and quality of counseling performed by the intern is consistent with the education, training, and experience of the intern.

(9) The supervisor shall monitor and evaluate the extent, kind, and quality of counseling performed by the intern by direct observation, review of audio or video tapes of therapy, review of progress and process notes and other treatment records, or by any other means deemed appropriate by the supervisor.

(10) The supervisor shall address with the intern the manner in which emergencies will be handled.

(c) Each supervisor shall provide the intern with the original signed "Responsibility Statement for Supervisors of a Professional Clinical Counselor Intern" (new 03/10, form No. 1800 37A-643) prior to the commencement of any counseling or supervision. Interns shall provide the board with the signed "Responsibility Statement for Supervisors of a Professional Clinical Counselor Intern" (new 03/10, form No. 1800 37A-643) from each supervisor upon application for examination eligibility.

(d) A supervisor shall give at least one (1) week's prior written notice to an intern of the supervisor's intent not to sign for any further hours of experience for such person. A supervisor who has not provided such notice shall sign for hours of experience obtained in good faith where such supervisor actually provided the required supervision.

(e) The supervisor shall obtain from each intern for whom supervision will be provided, the name, address, and telephone number of the intern's most recent supervisor and employer.

(f) In any setting that is not a private practice, a supervisor shall evaluate the site(s) where an intern will be gaining hours of experience toward licensure and shall determine that: (1) the site(s) provides experience which is within the scope of practice of a professional clinical counselor; and (2) the experience is in compliance with the requirements set forth in section 1820 and section 4999.46 of the Code.

(g) Upon written request of the board, the supervisor shall provide to the board any documentation which verifies the supervisor's compliance with the requirements set forth in this section.

(h) The board shall not deny hours of experience gained towards licensure by any supervisee due to failure of his or her supervisor to complete the training or coursework requirements in subsection (a) (6) (A).

NOTE: Authority cited: Sections 4990.20 and 4999.48 Business and Professions Code. Reference: Sections 4999.12, 4999.34, 4999.36, 4999.44 through 4999.48 and 4999.54, Business and Professions Code.

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To: Committee Members

Date: October 16, 2012

From: Rosanne Helms
Legislative Analyst

Telephone: (916) 574-7897

Subject: Proposed Legislation: Remediation of Certain Coursework for LMFT Applicants

Summary

This proposal would allow an LMFT applicant to remediate one course work deficiency and would clarify that LCSWs are also allowed to remediate certain coursework deficiencies.

Problem Statement

Under current law, an LMFT applicant who applies for licensure with a degree earned in the State of California must demonstrate that the degree covers specific topic areas.

Similar requirements are in place for LPCC and LCSW applicants. However, the law makes it more difficult for LMFT applicants to remediate deficiencies in the degree. Therefore, staff is proposing amendments to make the law for remediation of deficient coursework more equitable across the Board's license types.

Background

Current law for degree content can be summarized, by license type, as follows:

1. Existing Law for LMFT Applicants – Graduate Study Begun After August 1, 2012
This subgroup of LMFT applicants must obtain a degree that meets certain specified content area requirements. This is called a “single integrated degree program.” If the applicant is deficient in one of the content areas, the applicant must return to graduate study and obtain an entirely new degree.
2. Existing Law for LMFT Applicants – Graduate Study Begun Before August 1, 2012
This subgroup of LMFT applicants must obtain a degree that meets certain specified content area requirements. In addition, in order to sit for the licensing examinations, there are additional coursework requirements, some of which must be completed within the degree, and some of which may be remediated outside of the degree either through graduate-level work or from a CE provider. However, the areas of alcoholism and other chemical substance dependency, and spousal or partner abuse, must be obtained within the degree program. Although an out-of-state MFT applicant may remediate this coursework, an in-state applicant cannot. Therefore, and in-

state applicant missing one of these areas must return to graduate study and obtain an entirely new degree.

3. Existing Law for LCSW Applicants

LCSW applicants must obtain a degree from an accredited school of social work. Because the accreditation standards specify standard coursework, LCSW law does not list as many specific coursework requirements as the LMFT and LPCC laws do. LCSW law does state that the applicants must have coursework in alcoholism and chemical substance dependency, spousal or partner abuse, human sexuality, and child abuse assessment and reporting. All of this coursework may be completed through graduate-level work or from a CE provider. However, recently questions have been raised regarding remediation of the spousal and partner abuse coursework through CE providers.

4. Existing Law for LPCC Applicants – Graduate Study Begun After August 1, 2012

This subgroup of LPCC applicants must obtain a degree that contains a specified number of units in each of several core content areas. Up to three of these core content areas may be remediated with post-master's level coursework if missing from the degree. In addition, several other areas of instruction are required that can be remediated either through post-master's level coursework or from a CE provider.

5. Existing Law for LPCC Applicants – Graduate Study Begun Before August 1, 2012

This subgroup of LPCC applicants must obtain a degree that contains a specified number of units in each of several core content areas. Up to two of these core content areas may be remediated with post-master's level coursework if missing from the degree. In addition, several other areas of instruction are required that can be remediated either through post-master's level coursework or from a CE provider.

Proposed Statutory Amendments

The proposed amendments fall into three separate categories:

1. LMFT Applicant Remediation of a Deficient Degree – Degrees Graduate Study Begun After August 1, 2012

LPCC law allows an LPCC applicant, who began graduate study after August 1, 2012, whose degree is deficient in no more than three core content areas, to remediate those areas of study by completing post-master's or postdoctoral degree coursework from an accredited or approved institution (BPC §4999.33(f)).

This allows LPCC applicants who have some minor degree deficiencies the opportunity to complete the required coursework, rather than having to obtain an entirely new master's degree if they want to become licensed.

The law does not currently allow LMFT applicants, who begin graduate study after August 1, 2012, this option. If an LMFT applicant's degree turns out to be deficient in any of the specified content areas, he or she cannot become licensed unless he or she obtains an entirely new degree.

Proposed Amendments: Amend Section 4980.36 (required coursework for degrees begun after August 1, 2012) to allow an LMFT applicant whose degree is deficient in no more than one of the specified required areas of instruction, to remediate that one deficiency with post-master's or postdoctoral degree coursework.

2. LMFT Applicant Remediation of a Deficient Degree – Graduate Study Begun Before August 1, 2012

Current law allows an LPCC applicant whose degree is deficient in no more than two core content areas to remediate those areas of study by completing post-master's or postdoctoral degree coursework from an accredited or approved institution (BPC §§4999.32(d)).

The "core content areas" required of LPCC applicants do not exist for the LMFT applicants who began graduate study prior to August 1, 2012. However, the LMFT degree must contain specific instruction in alcoholism and other chemical substance dependency, as well as a minimum of 15 contact hours of coursework in spousal or partner abuse assessment, with no exceptions. While an LMFT licensee from out of state could apply and then remediate this coursework, the law does not allow this option for California graduates seeking a license.

The Board's licensing unit occasionally receives these deficient LMFT applications, and has no choice but to reject the application. Staff estimates it receives approximately 10 such applicants per year. Typically, the degree is deficient in spousal or partner abuse assessment, detection, and intervention.

Proposed Amendments: Amend Sections 4980.41(required coursework for degrees begun before August 1, 2012) to allow an LMFT applicant whose degree is deficient in either alcoholism and other chemical substance dependency, or spousal or partner abuse assessment, to remediate that one deficiency.

3. Spousal or Partner Abuse Coursework Requirements for LCSW Applicants, and for LPCC and LMFT Applicants who Began Graduate Study Before August 1, 2012

LMFT, LPCC, and LCSW law currently require coursework in spousal or partner abuse assessment in order to become licensed, as follows:

- LMFT law states that the qualifying degree shall include at least 15 contact hours of coursework, and that the applicant must provide a certification from the chief academic officer of their school that the required coursework is included within the institution's required curriculum for graduation (BPC §4980.41(a)(5)).
- LPCC law requires 15 contact hours of coursework, but this coursework does not have to be part of the degree program. The board has historically interpreted §4999.32 (e)(4) to allow the course be taken from either an accredited or approved educational institution, or from a Board accepted continuing education provider (BPC §4999.32(e)(4)).
- LCSW applicants must also complete instruction and training in spousal or partner abuse assessment. However, for LCSW applicants, the law is less clear about whether the instruction and training must be part of the degree program. Although the law does not specifically say the required 15 contact hours of coursework must be part of the degree program as LMFT law does, it states that required coursework may be taken either in fulfillment of other educational requirements for licensure or in a separate course. However, it also states that the chief academic officer of the school must certify that such coursework is in the curriculum required for graduation (BPC § 4996.2(f)).

Because the law does not specifically state that the qualifying degree must contain this coursework, the Board has historically interpreted the LCSW law to allow the applicant to remediate any deficiency in this requirement by completing coursework either from an accredited or approved educational institution, or from a Board accepted continuing education provider. However, recently questions have been raised as to whether this interpretation is correct.

Due to the fact that it seems inequitable that LPCC applicants may remediate spousal or partner abuse coursework while LMFT applicants may not, and due to the fact that the LCSW law is ambiguous about the subject of remediation, staff recommends that the language requiring certification from the chief academic officer of the school that the required coursework is included within the institution's required curriculum for graduation, be removed from both LMFT and LCSW law (BPC §§4980.41(a)(5) and 4996.2(f)). Removal of this sentence will allow both LMFT and LCSW applicants to remediate this coursework. Remediation may be either from an accredited or approved educational institution, or from a Board accepted continuing education provider.

It should be noted that LMFT and LPCC applicants who began graduate study after August 1, 2012 will still need to complete spousal or partner abuse assessment within the degree program, because after that time it is required to be part of an integrated degree program which includes instruction in several topic areas. However, LMFT and LPCC schools have had significant advance notice that as of August 1, 2012, this will be a requirement. In addition, as noted in item #1 above, staff is proposing an amendment to allow remediation of one area of instruction.

Recommendation

Conduct an open discussion regarding the three amendments staff is proposing. Direct staff to make any discussed changes and any non-substantive changes, and bring to the Board for consideration as Board-sponsored legislation.

Attachments

Attachment A: Proposed Language

**ATTACHMENT A
PROPOSED LANGUAGE**

LICENSED MARRIAGE AND FAMILY THERAPIST LAW

Amend Business and Professions Code (BPC) §4980.36

(a) This section shall apply to the following:

(1) Applicants for licensure or registration who begin graduate study before August 1, 2012, and do not complete that study on or before December 31, 2018.

(2) Applicants for licensure or registration who begin graduate study before August 1, 2012, and who graduate from a degree program that meets the requirements of this section.

(3) Applicants for licensure or registration who begin graduate study on or after August 1, 2012.

(b) To qualify for a license or registration, applicants shall possess a doctor's or master's degree meeting the requirements of this section in marriage, family, and child counseling, marriage and family therapy, couple and family therapy, psychology, clinical psychology, counseling psychology, or counseling with an emphasis in either marriage, family, and child counseling or marriage and family therapy, obtained from a school, college, or university approved by the Bureau for Private Postsecondary Education or accredited by either the Commission on the Accreditation of Marriage and Family Therapy Education or a regional accrediting agency recognized by the United States Department of Education. The board has the authority to make the final determination as to whether a degree meets all requirements, including, but not limited to, course requirements, regardless of accreditation or approval.

(c) A doctor's or master's degree program that qualifies for licensure or registration shall do the following:

(1) Integrate all of the following throughout its curriculum:

(A) Marriage and family therapy principles.

(B) The principles of mental health recovery-oriented care and methods of service delivery in recovery-oriented practice environments, among others.

(C) An understanding of various cultures and the social and psychological implications of socioeconomic position, and an understanding of how poverty and social stress impact an individual's mental health and recovery.

(2) Allow for innovation and individuality in the education of marriage and family therapists.

(3) Encourage students to develop the personal qualities that are intimately related to effective practice, including, but not limited to, integrity, sensitivity, flexibility, insight, compassion, and personal presence.

- (4) Permit an emphasis or specialization that may address any one or more of the unique and complex array of human problems, symptoms, and needs of Californians served by marriage and family therapists.
 - (5) Provide students with the opportunity to meet with various consumers and family members of consumers of mental health services to enhance understanding of their experience of mental illness, treatment, and recovery.
- (d) The degree described in subdivision (b) shall contain no less than 60 semester or 90 quarter units of instruction that includes, but is not limited to, the following requirements:
- (1) Both of the following:
 - (A) No less than 12 semester or 18 quarter units of coursework in theories, principles, and methods of a variety of psychotherapeutic orientations directly related to marriage and family therapy and marital and family systems approaches to treatment and how these theories can be applied therapeutically with individuals, couples, families, adults, including elder adults, children, adolescents, and groups to improve, restore, or maintain healthy relationships.
 - (B) Practicum that involves direct client contact, as follows:
 - (i) A minimum of six semester or nine quarter units of practicum in a supervised clinical placement that provides supervised fieldwork experience.
 - (ii) A minimum of 150 hours of face-to-face experience counseling individuals, couples, families, or groups.
 - (iii) A student must be enrolled in a practicum course while counseling clients, except as specified in subdivision (c) of Section 4980.42.
 - (iv) The practicum shall provide training in all of the following areas:
 - (I) Applied use of theory and psychotherapeutic techniques.
 - (II) Assessment, diagnosis, and prognosis.
 - (III) Treatment of individuals and premarital, couple, family, and child relationships, including trauma and abuse, dysfunctions, healthy functioning, health promotion, illness prevention, and working with families.
 - (IV) Professional writing, including documentation of services, treatment plans, and progress notes.
 - (V) How to connect people with resources that deliver the quality of services and support needed in the community.
 - (v) Educational institutions are encouraged to design the practicum required by this subparagraph to include marriage and family therapy experience in low-income and multicultural mental health settings.
 - (vi) In addition to the 150 hours required in clause (ii), 75 hours of either of the following:

(I) Client-centered advocacy, as defined in Section 4980.03.

(II) Face-to-face experience counseling individuals, couples, families, or groups.

(2) Instruction in all of the following:

(A) Diagnosis, assessment, prognosis, and treatment of mental disorders, including severe mental disorders, evidence-based practices, psychological testing, psychopharmacology, and promising mental health practices that are evaluated in peer reviewed literature.

(B) Developmental issues from infancy to old age, including instruction in all of the following areas:

(i) The effects of developmental issues on individuals, couples, and family relationships.

(ii) The psychological, psychotherapeutic, and health implications of developmental issues and their effects.

(iii) Aging and its biological, social, cognitive, and psychological aspects.

(iv) A variety of cultural understandings of human development.

(v) The understanding of human behavior within the social context of socioeconomic status and other contextual issues affecting social position.

(vi) The understanding of human behavior within the social context of a representative variety of the cultures found within California.

(vii) The understanding of the impact that personal and social insecurity, social stress, low educational levels, inadequate housing, and malnutrition have on human development.

(C) The broad range of matters and life events that may arise within marriage and family relationships and within a variety of California cultures, including instruction in all of the following:

(i) Child and adult abuse assessment and reporting.

(ii) Spousal or partner abuse assessment, detection, intervention strategies, and same-gender abuse dynamics.

(iii) Cultural factors relevant to abuse of partners and family members.

(iv) Childbirth, child rearing, parenting, and stepparenting.

(v) Marriage, divorce, and blended families.

(vi) Long-term care.

(vii) End of life and grief.

(viii) Poverty and deprivation.

(ix) Financial and social stress.

(x) Effects of trauma.

(xi) The psychological, psychotherapeutic, community, and health implications of the matters and life events described in clauses (i) to (x), inclusive.

(D) Cultural competency and sensitivity, including a familiarity with the racial, cultural, linguistic, and ethnic backgrounds of persons living in California.

(E) Multicultural development and cross-cultural interaction, including experiences of race, ethnicity, class, spirituality, sexual orientation, gender, and disability, and their incorporation into the psychotherapeutic process.

(F) The effects of socioeconomic status on treatment and available resources.

(G) Resilience, including the personal and community qualities that enable persons to cope with adversity, trauma, tragedy, threats, or other stresses.

(H) Human sexuality, including the study of physiological, psychological, and social cultural variables associated with sexual behavior and gender identity, and the assessment and treatment of psychosexual dysfunction.

(I) Substance use disorders, co-occurring disorders, and addiction, including, but not limited to, instruction in all of the following:

(i) The definition of substance use disorders, co-occurring disorders, and addiction. For purposes of this subparagraph, “co-occurring disorders” means a mental illness and substance abuse diagnosis occurring simultaneously in an individual.

(ii) Medical aspects of substance use disorders and co-occurring disorders.

(iii) The effects of psychoactive drug use.

(iv) Current theories of the etiology of substance abuse and addiction.

(v) The role of persons and systems that support or compound substance abuse and addiction.

(vi) Major approaches to identification, evaluation, and treatment of substance use disorders, co-occurring disorders, and addiction, including, but not limited to, best practices.

(vii) Legal aspects of substance abuse.

(viii) Populations at risk with regard to substance use disorders and co-occurring disorders.

(ix) Community resources offering screening, assessment, treatment, and followup for the affected person and family.

(x) Recognition of substance use disorders, co-occurring disorders, and addiction, and appropriate referral.

(xi) The prevention of substance use disorders and addiction.

(J) California law and professional ethics for marriage and family therapists, including instruction in all of the following areas of study:

- (i) Contemporary professional ethics and statutory, regulatory, and decisional laws that delineate the scope of practice of marriage and family therapy.
- (ii) The therapeutic, clinical, and practical considerations involved in the legal and ethical practice of marriage and family therapy, including, but not limited to, family law.
- (iii) The current legal patterns and trends in the mental health professions.
- (iv) The psychotherapist-patient privilege, confidentiality, the patient dangerous to self or others, and the treatment of minors with and without parental consent.
- (v) A recognition and exploration of the relationship between a practitioner's sense of self and human values and his or her professional behavior and ethics.
- (vi) Differences in legal and ethical standards for different types of work settings.
- (vii) Licensing law and licensing process.

(e) An applicant whose degree is deficient in no more than one of the required areas of instruction listed in subparagraphs (A) to (J), inclusive, of paragraph (2) of subdivision (d) may satisfy that deficiency by successfully completing graduate level coursework at an accredited or approved institution, as described in subdivision (b).

~~(e)~~(f) The degree described in subdivision (b) shall, in addition to meeting the requirements of subdivision (d), include instruction in case management, systems of care for the severely mentally ill, public and private services and supports available for the severely mentally ill, community resources for persons with mental illness and for victims of abuse, disaster and trauma response, advocacy for the severely mentally ill, and collaborative treatment. This instruction may be provided either in credit level coursework or through extension programs offered by the degree-granting institution.

~~(f)~~(g) The changes made to law by this section are intended to improve the educational qualifications for licensure in order to better prepare future licentiates for practice, and are not intended to expand or restrict the scope of practice for marriage and family therapists.

Amend §4980.41

(a) An applicant for licensure whose education qualifies him or her under Section 4980.37 shall complete the following coursework or training in order to be eligible to sit for the licensing examinations as specified in subdivision (d) of Section 4980.40:

(1) A two semester or three quarter unit course in California law and professional ethics for marriage and family therapists, which shall include, but not be limited to, the following areas of study:

(A) Contemporary professional ethics and statutory, regulatory, and decisional laws that delineate the profession's scope of practice.

(B) The therapeutic, clinical, and practical considerations involved in the legal and ethical practice of marriage and family therapy, including family law.

(C) The current legal patterns and trends in the mental health profession.

(D) The psychotherapist/patient privilege, confidentiality, the patient dangerous to self or others, and the treatment of minors with and without parental consent.

(E) A recognition and exploration of the relationship between a practitioner's sense of self and human values and his or her professional behavior and ethics.

This course may be considered as part of the 48 semester or 72 quarter unit requirements contained in Section 4980.37.

(2) A minimum of seven contact hours of training or coursework in child abuse assessment and reporting as specified in Section 28 and any regulations promulgated thereunder.

(3) A minimum of 10 contact hours of training or coursework in human sexuality as specified in Section 25, and any regulations promulgated thereunder. When coursework in a master's or doctor's degree program is acquired to satisfy this requirement, it shall be considered as part of the 48 semester or 72 quarter unit requirement contained in Section 4980.37.

(4) For persons who began graduate study on or after January 1, 1986, a master's or doctor's degree qualifying for licensure shall include specific instruction in alcoholism and other chemical substance dependency as specified by regulation. When coursework in a master's or doctor's degree program is acquired to satisfy this requirement, it shall be considered as part of the 48 semester or 72 quarter unit requirement contained in Section 4980.37.

(5) For persons who began graduate study during the period commencing on January 1, 1995, and ending on December 31, 2003, a master's or doctor's degree qualifying for licensure shall include coursework in spousal or partner abuse assessment, detection, and intervention. For persons who began graduate study on or after January 1, 2004, a master's or doctor's degree qualifying for licensure shall include a minimum of 15 contact hours of coursework in spousal or partner abuse assessment, detection, and intervention strategies, including knowledge of community resources, cultural factors, and same gender abuse dynamics. Coursework required under this subdivision may be satisfactory if taken either in fulfillment of other educational requirements for licensure or in a separate course. ~~The requirement for coursework shall be satisfied by, and the board shall accept in satisfaction of the requirement, a certification from the chief academic officer of the educational institution from which the applicant graduated that the required coursework is included within the institution's required curriculum for graduation.~~

(6) For persons who began graduate study on or after January 1, 2001, an applicant shall complete a minimum of a two semester or three quarter unit survey course in psychological testing. When coursework in a master's or doctor's degree program is acquired to satisfy this requirement, it may be considered as part of the 48 semester or 72 quarter unit requirement of Section 4980.37.

(7) For persons who began graduate study on or after January 1, 2001, an applicant shall complete a minimum of a two semester or three quarter unit survey course in psychopharmacology. When coursework in a master's or doctor's degree program is acquired to satisfy this requirement, it may be considered as part of the 48 semester or 72 quarter unit requirement of Section 4980.37.

(8) The requirements added by paragraphs (6) and (7) are intended to improve the educational qualifications for licensure in order to better prepare future licentiates for practice and are not intended in any way to expand or restrict the scope of licensure for marriage and family therapists.

(b) An applicant whose degree is deficient in the coursework described in either paragraph (4) or paragraph (5) of this section may satisfy that deficiency by doing the following:

(1) If the degree is deficient in the course described in paragraph (4), the applicant may satisfy the deficiency by successfully completing coursework in alcoholism and other chemical substance dependency as specified by regulation.

(2) If the degree is deficient in the course described in paragraph (5), the applicant may satisfy the deficiency by successfully completing coursework which includes a minimum of 15 contact hours in spousal or partner abuse assessment, detection, and intervention strategies, including knowledge of community resources, cultural factors, and same gender abuse dynamics. The coursework may be obtained from a master's or doctoral degree program at an accredited or approved institution, as defined in subdivision (b) of section 4980.37, or from a Board-accepted continuing education provider, as defined in Section 4980.54.

(3) If the applicant's degree is deficient in the coursework described in both paragraph (4) and paragraph (5), those deficiencies cannot be remediated.

~~(b)~~(c) This section shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.

LICENSED CLINICAL SOCIAL WORKER LAW

Amend §4996.2

Each applicant shall furnish evidence satisfactory to the board that he or she complies with all of the following requirements:

(a) Is at least 21 years of age.

(b) Has received a master's degree from an accredited school of social work.

(c) Has had two years of supervised post-master's degree experience, as specified in Section 4996.23.

(d) Has not committed any crimes or acts constituting grounds for denial of licensure under Section 480. The board shall not issue a registration or license to any person who has been convicted of any crime in this or another state or in a territory of the United States that involves sexual abuse of children or who is required to register pursuant to Section 290 of the Penal Code or the equivalent in another state or territory.

(e) Has completed adequate instruction and training in the subject of alcoholism and other chemical substance dependency. This requirement applies only to applicants who matriculate on or after January 1, 1986.

(f) Has completed instruction and training in spousal or partner abuse assessment, detection, and intervention. This requirement applies to an applicant who began graduate training during the period commencing on January 1, 1995, and ending on December 31, 2003. An applicant who began graduate training on or after January 1, 2004, shall complete a minimum of 15 contact hours of coursework in spousal or partner abuse assessment, detection, and intervention strategies, including knowledge of community resources, cultural factors, and same gender abuse dynamics. Coursework required under this subdivision may be satisfactory if taken either in fulfillment of other educational requirements for licensure or in a separate course. ~~This requirement for coursework shall be satisfied by, and the board shall accept in satisfaction of the requirement, a certification from the chief academic officer of the educational institution from which the applicant graduated that the required coursework is included within the institution's required curriculum for graduation.~~

(g) Has completed a minimum of 10 contact hours of training or coursework in human sexuality as specified in Section 1807 of Title 16 of the California Code of Regulations. This training or coursework may be satisfactory if taken either in fulfillment of other educational requirements for licensure or in a separate course.

(h) Has completed a minimum of seven contact hours of training or coursework in child abuse assessment and reporting as specified in Section 1807.2 of Title 16 of the California Code of Regulations. This training or coursework may be satisfactory if taken either in fulfillment of other educational requirements for licensure or in a separate course.

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To: Committee Members

Date: October 18, 2012

From: Rosanne Helms
Legislative Analyst

Telephone: (916) 574-7897

Subject: Proposed Legislation: Requirements for LMFT and LPCC Out-of-State Applicants

Summary

Licensing requirements for out-of-state LMFT and LPCC applicants are set to change on January 1, 2014. At this time, out-of-state applicants will need to complete all of the coursework topic areas and units that an in-state applicant would need to complete, in addition to their qualifying degree, before obtaining a license or registration. All of this coursework would need to be completed at a graduate level.

Recently, concerns have been raised that the manner in which the coursework must be remediated is so strict that it creates a barrier to licensure for out-of-state applicants. This proposal makes amendments that provide additional remediation options for out-of-state applicants.

Background

SB 33 (Chapter 26, Statutes of 2009), became law on January 1, 2010. This bill made a number of changes to the required curriculum to become licensed as a LMFT for persons who begin graduate study on or after August 1, 2012. Major changes made by this bill were as follows:

- Increases the degree's total unit requirement from 48 to 60 semester units (72 to 90 quarter units).
- Provides more flexibility in the curriculum requirements, such as fewer requirements for specific hours or units for particular coursework, to allow for innovation in curriculum design.
- Infuses the culture and norms of public mental health work and principles of the Mental Health Services Act throughout the curriculum
- Changes the requirements for LMFT applicants who earned a degree outside of California effective January 1, 2014. Instead of requiring specific hours or units for particular coursework (which may be completed as graduate level coursework or from a continuing education (CE) provider, the out of state applicant will be required to complete all units and coursework listed under Business and Professions Code (BPC) Section 4980.36(d). This subsection consists of an extensive list of requirements for a degree begun after August 1, 2012, all of which must be graduate level coursework and must consist of at least 60 semester or 90 quarter units. **Attachment C** shows the changes in law for out-of-state LMFT applicants. It shows the current requirements for out-of-state

applicants (BPC §§4980.80, 4980.90, 4980.37, and 4980.41), and it shows the new requirements for out-of-state applicants that begins on January 1, 2014 (BPC §§4980.78, 4980.36).

SB 33 was the result of an extensive committee process and public discussion by the Board and its stakeholders. As the implementation date draws closer, however, concerns are being raised about how the changes will affect the portability of licenses for out-of-state applicants.

LPCC out-of-state applicant requirements were mirrored after LMFT law, and therefore contain similar changes in the out-of-state applicant requirements effective January 1, 2014. Therefore, the LPCC requirements pose the same portability issues. **Attachment D** shows the changes in law for out-of-state LPCC applicants. It shows the current requirements for out-of-state applicants (BPC §§4999.57, 4999.58, 4999.59, and 4999.32), and it shows the new requirements for out-of-state applicants that begins on January 1, 2014 (BPC §§4999.60, 4999.61, 4999.62, and 4999.33).

Discussion

Staff is concerned that requiring out-of-state applicants to complete such a large number of additional graduate level units, much of which consists of coursework specifically addressing California cultures, will create such a barrier to out-of-state licensees that they won't be able to obtain a license without significant additional cost.

At the time that the Board considered changing the out-of-state requirements for LMFT applicants (in 2007 and 2008), there was discussion that schools would be able to adjust to offer programs of coursework specifically aimed at out-of-state applicants. However, the economic climate was different during that time. Today, many of the public-run colleges and universities are overcrowded and facing strict budgetary constraints. They are not able to offer coursework to students who have not been accepted as part of their master's degree programs.

Without having the option to make up coursework from continuing education providers, the only option for out-of-state applicants would be to turn to private colleges and universities, which may offer graduate level coursework to individuals not enrolled in their master's degree program, but at a very high price-per-unit. Remediating a 48-unit out-of-state degree to reach 60 units and completing a large number of deficient topic areas, when the applicant had already completed a master's degree and may have been practicing in another state could cost the applicant several thousand dollars if the only option is to complete the program through a private university.

Proposed Action

Staff is proposing two separate Board actions in order to address this situation:

- 1. Pursue legislation to extend the effective date of the new education requirements for out-of-state applicants for licensure from January 1, 2014 to January 1, 2015. (Attachment A)**
Pursuing this legislative proposal this year would push the implementation date of the new out-of-state requirements out one year. This would allow the Board time to carefully consider how to best address the problems posed by the new out-of-state requirements.
- 2. Pursue legislation to change the education requirements for out-of-state applicants for licensure, effective January 1, 2015. (Attachment B)** This proposal could either be pursued this year, as an amendment to the bill mentioned above, or the following year, if more time is needed to iron out various issues. The proposed amendments do the following:
 - a.** Extends the implementation date of the new out-of-state requirements until January 1, 2015.
 - b.** Continues to require that unlicensed out of state applicants for licensure or registration have a degree that contains at least 48 semester/72 quarter units and the 6 semester/9 quarter units of practicum. They would still need to make up any deficiencies in the 60 semester/90 quarter units required by 4980.36(d) (LMFTs) and 4999.33(c) (LPCCs).

For LMFTs, the law has been amended to allow them to remediate any missing course content requirements in 4980.36(d)(2) from either an accredited or approved school, or from a continuing education provider that is accepted by the Board.

The amendments would allow LPCCs to remediate up to three of the core content areas listed in 4999.33(c)(1)(A) – (M) from an accredited or approved school. They could also remediate any missing course content requirements in 4999.33(d) from either an accredited or approved school, or from an accepted continuing education provider.

- c. Allows an applicant for registration to complete any deficient units and course content requirements while registered as an intern.
- d. Continues to require that out of state applicants for licensure who are licensed in another state have a degree that contains at least 48 semester/72 quarter units and the 6 semester/9 quarter units of practicum. They would not make up any deficiencies in the 60 semester/90 quarter units required by 4980.36(d) and 4999.33(c); instead, their 48 semester/72 quarter unit degree would be sufficient.

Recommendation

Conduct an open discussion regarding the two legislative proposals discussed above. Direct staff to do the following:

1. **Legislation to extend the effective date of the new education requirements for out-of-state applicants to January 1, 2015 (Attachment A):** make any discussed changes and any non-substantive changes, and bring to the Board for consideration as Board-sponsored legislation.
2. **Legislation to change the educational requirements for out-of-state applicants (Attachment B):** Conduct an open discussion about the changes are needed to address the upcoming barriers to licensure for out-of-state LMFT and LPCC applicants. Direct staff to make any discussed changes and either bring back to the Policy and Advocacy Committee, if necessary, or bring to Board for consideration as Board-sponsored legislation.

Attachments

- A. Amendments to Extend Effective Date of New Requirements for Out-of State LMFT and LPCC Applicants
- B. Amendments to Educational Requirements for Out-of-State LMFT and LPCC Applicants
- C. Law for Out-of-State LMFT Applicants
- D. Law for Out-of-State LPCC Applicants

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**ATTACHMENT A
PROPOSED LANGUAGE
AMENDMENTS TO EXTEND EFFECTIVE DATE OF NEW REQUIREMENTS FOR
OUT-OF-STATE LMFT AND LPCC APPLICANTS**

LMFTs

Amend §4980.72

(a) This section applies to persons who are licensed outside of California and apply for licensure on or after January 1, ~~2014~~2015.

(b) The board may issue a license to a person who, at the time of submitting an application for a license pursuant to this chapter, holds a valid license issued by a board of marriage counselor examiners, board of marriage and family therapists, or corresponding authority, of any state or country, if all of the following conditions are satisfied:

(1) The applicant's education is substantially equivalent, as defined in Section 4980.78. The applicant's degree title need not be identical to that required by Section 4980.36 or 4980.37.

(2) The applicant complies with Section 4980.76, if applicable.

(3) The applicant's supervised experience is substantially equivalent to that required for a license under this chapter. The board shall consider hours of experience obtained outside of California during the six-year period immediately preceding the date the applicant initially obtained the license described above.

(4) The applicant passes the examinations required to obtain a license under this chapter.

Amend §4980.74

(a) This section applies to persons who apply for licensure or registration on or after January 1, ~~2014~~2015, and who do not hold a license as described in Section 4980.72.

(b) The board shall accept education gained while residing outside of California for purposes of satisfying licensure or registration requirements if the education is substantially equivalent, as defined in Section 4980.78, and the applicant complies with Section 4980.76, if applicable. The applicant's degree title need not be identical to that required by Section 4980.36 or 4980.37.

(c) The board shall accept experience gained outside of California for purposes of satisfying licensure or registration requirements if the experience is substantially equivalent to that required by this chapter.

Amend §4980.78.

(a) This section applies to persons who apply for licensure or registration on or after January 1, ~~2014~~2015.

(b) For purposes of Sections 4980.72 and 4980.74, education is substantially equivalent if all of the following requirements are met:

(1) The degree is obtained from a school, college, or university accredited by an accrediting agency recognized by the United States Department of Education and consists of, at a minimum, 48 semester or 72 quarter units, including, but not limited to, both of the following:

(A) Six semester or nine quarter units of practicum, including, but not limited to, a minimum of 150 hours of face-to-face counseling.

(B) Twelve semester or 18 quarter units in the areas of marriage, family, and child counseling and marital and family systems approaches to treatment, as specified in subparagraph (A) of paragraph (1) of subdivision (d) of Section 4980.36.

(2) The applicant completes any units and course content requirements under subdivision (d) of Section 4980.36 not already completed in his or her education.

(3) The applicant completes credit level coursework from a degree-granting institution that provides all of the following:

(A) Instruction regarding the principles of mental health recovery-oriented care and methods of service delivery in recovery model practice environments.

(B) An understanding of various California cultures and the social and psychological implications of socioeconomic position.

(C) Structured meeting with various consumers and family members of consumers of mental health services to enhance understanding of their experience of mental illness, treatment, and recovery.

(D) Instruction in addiction and co-occurring substance abuse and mental health disorders, as specified in subparagraph (l) of paragraph (2) of subdivision (d) of Section 4980.36.

(4) The applicant completes a course in California law and professional ethics. The content of the course shall include, but not be limited to, advertising, scope of practice, scope of competence, treatment of minors, confidentiality, dangerous patients, psychotherapist-patient privilege, recordkeeping, patient access to records, the Health Insurance Portability and Accountability Act, dual relationships, child abuse, elder and dependent adult abuse, online therapy, insurance reimbursement, civil liability, disciplinary actions and unprofessional conduct, ethics complaints and ethical standards, termination of therapy, standards of care, relevant family law, therapist disclosures to patients, differences in legal and ethical standards in different types of work settings, and licensing law and licensing process.

(5) The applicant's degree title need not be identical to that required by subdivision (b) of Section 4980.36.

Amend §4980.80

(a) This section applies to persons who apply for licensure between January 1, 2010, and December 31, ~~2013~~2014, inclusive.

(b) The board may issue a license to a person who, at the time of application, holds a valid license issued by a board of marriage counselor examiners, marriage therapist examiners, or corresponding authority of any state, if all of the following requirements are satisfied:

(1) The person has held that license for at least two years immediately preceding the date of application.

(2) The education and supervised experience requirements are substantially the equivalent of this chapter.

(3) The person complies with Section 4980.76, if applicable.

(4) The person successfully completes the board administered licensing examinations as specified by subdivision (d) of Section 4980.40 and pays the fees specified.

(5) The person completes all of the following coursework or training:

(A) (i) An applicant who completed a two semester or three quarter unit course in law and professional ethics for marriage and family therapists that included areas of study as specified in Section 4980.41 as part of his or her qualifying degree shall complete an 18-hour course in California law and professional ethics that includes, but is not limited to, the following subjects: advertising, scope of practice, scope of competence, treatment of minors, confidentiality, dangerous patients, psychotherapist-patient privilege, recordkeeping, patient access to records, requirements of the Health Insurance Portability and Accountability Act of 1996, dual relationships, child abuse, elder and dependent adult abuse, online therapy, insurance reimbursement, civil liability, disciplinary actions and unprofessional conduct, ethics complaints and ethical standards, termination of therapy, standards of care, relevant family law, and therapist disclosures to patients.

(ii) An applicant who has not completed a two semester or three quarter unit course in law and professional ethics for marriage and family therapists that included areas of study as specified in Section 4980.41 as part of his or her qualifying degree, shall complete a two semester or three quarter unit course in California law and professional ethics that includes, at minimum, the areas of study specified in Section 4980.41.

(B) A minimum of seven contact hours of training or coursework in child abuse assessment and reporting as specified in Section 28 and any regulations promulgated thereunder.

(C) A minimum of 10 contact hours of training or coursework in human sexuality as specified in Section 25 and any regulations promulgated thereunder.

(D) A minimum of 15 contact hours of training or coursework in alcoholism and other chemical substance dependency as specified by regulation.

(E) (i) Instruction in spousal or partner abuse assessment, detection, and intervention. This instruction may be taken either in fulfillment of other requirements for licensure or in a separate course.

(ii) A minimum of 15 contact hours of coursework or training in spousal or partner abuse assessment, detection, and intervention strategies.

(F) A minimum of a two semester or three quarter unit survey course in psychological testing. This course may be taken either in fulfillment of other requirements for licensure or in a separate course.

(G) A minimum of a two semester or three quarter unit survey course in psychopharmacology. This course may be taken either in fulfillment of other requirements for licensure or in a separate course.

(H) With respect to human sexuality, alcoholism and other chemical substance dependency, spousal or partner abuse assessment, detection, and intervention, psychological testing, and psychopharmacology, the board may accept training or coursework acquired out of state.

(c) This section shall remain in effect only until January 1, ~~2014~~2015, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, ~~2014~~2015, deletes or extends that date.

Amend §4980.90

(a) This section applies to persons who apply for licensure between January 1, 2010, and December 31, ~~2013~~2014, inclusive.

(b) Experience gained outside of California shall be accepted toward the licensure requirements if it is substantially equivalent to that required by this chapter, if the applicant complies with Section 4980.76. if applicable, and if the applicant has gained a minimum of 250 hours of supervised experience in direct counseling within California while registered as an intern with the board. The board shall consider hours of experience obtained in another state during the six-year period immediately preceding the applicant's initial licensure by that state as a marriage and family therapist.

(c) Education gained while residing outside of California shall be accepted toward the licensure requirements if it is substantially equivalent to the education requirements of this chapter, and if the applicant has completed all of the following:

(1) A two semester or three quarter unit course in California law and professional ethics for marriage, family, and child counselors that shall include areas of study as specified in Section 4980.41.

(2) A minimum of seven contact hours of training or coursework in child abuse assessment and reporting as specified in Section 28 and any regulations promulgated thereunder.

(3) A minimum of 10 contact hours of training or coursework in sexuality as specified in Section 25 and any regulations promulgated thereunder.

(4) A minimum of 15 contact hours of training or coursework in alcoholism and other chemical substance dependency as specified by regulation.

(5) (A) Instruction in spousal or partner abuse assessment, detection, and intervention. This instruction may be taken either in fulfillment of other educational requirements for licensure or in a separate course.

(B) A minimum of 15 contact hours of coursework or training in spousal or partner abuse assessment, detection, and intervention strategies.

(6) A minimum of a two semester or three quarter unit survey course in psychological testing. This course may be taken either in fulfillment of other requirements for licensure or in a separate course.

(7) A minimum of a two semester or three quarter unit survey course in psychopharmacology. This course may be taken either in fulfillment of other requirements for licensure or in a separate course.

(8) With respect to human sexuality, alcoholism and other chemical substance dependency, spousal or partner abuse assessment, detection, and intervention, psychological testing, and psychopharmacology, the board may accept training or coursework acquired out of state.

(d) For purposes of this section, the board may, in its discretion, accept education as substantially equivalent if the applicant meets both of the following requirements:

(1) The applicant has been granted a degree in a single integrated program primarily designed to train marriage and family therapists.

(2) The applicant's education meets the requirements of Sections 4980.37. The degree title need not be identical to those required by subdivision (b) of Section 4980.37. If the applicant's degree does not contain the content or overall units required by Section 4980.37, the board may, in its discretion, accept the applicant's education as substantially equivalent if the following criteria are satisfied:

(A) The applicant's degree contains the required number of practicum units and coursework required in the areas of marriage, family, and child counseling and marital and family systems approaches to treatment as specified in Section 4980.37.

(B) The applicant remediates his or her specific deficiency by completing the course content and the units required by Section 4980.37.

(C) The applicant's degree otherwise complies with this section.

(e) This section shall remain in effect only until January 1, ~~2014~~2015, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, ~~2014~~2015, deletes or extends that date.

LPCCs

Amend §4999.57

(a) This section applies to a person who applies for examination eligibility or registration between January 1, 2011, and December 31, ~~2013~~2014, inclusive, who does not hold a license described in subdivision (a) of Section 4999.58.

(b) Experience gained outside of California shall be accepted toward the licensure requirements if it is substantially equivalent to that required by this chapter, if the applicant complies with Section 4999.40, if applicable, and if the applicant has gained a minimum of 250 hours of supervised experience in direct counseling within California while registered as an intern with the board.

(c) Education gained while residing outside of California shall be accepted toward the licensure requirements if it is substantially equivalent to the education requirements of this chapter, and if the applicant has completed the training or coursework required under subdivision (e) of Section 4999.32, which includes, in addition to the course described in subparagraph (l) of paragraph (1) of subdivision (c) of Section 4999.32, an 18-hour course in California law and professional ethics for professional clinical counselors.

(d) For purposes of this section, the board may, in its discretion, accept education as substantially equivalent if the applicant's education meets the requirements of Section 4999.32. If the applicant's degree does not contain the content or the overall units required by Section 4999.32, the board may, in its discretion, accept the applicant's education as substantially equivalent if the following criteria are satisfied:

- (1) The applicant's degree contains the required number of practicum units under paragraph (3) of subdivision (c) of Section 4999.32.
- (2) The applicant remediates his or her specific deficiency by completing the course content and units required by Section 4999.32.
- (3) The applicant's degree otherwise complies with this section.

(e) This section shall become inoperative on January 1, ~~2014~~2015, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, ~~2014~~2015, deletes or extends that date.

Amend §4999.58

(a) This section applies to a person who applies for examination eligibility between January 1, 2011, and December 31, ~~2013~~2014, inclusive, and who meets both of the following requirements:

- (1) At the time of application, holds a valid license as a professional clinical counselor, or other counseling license that allows the applicant to independently provide clinical mental health services, in another jurisdiction of the United States.
- (2) Has held the license described in paragraph (1) for at least two years immediately

preceding the date of application.

(b) The board may issue a license to a person described in subdivision (a) if all of the following requirements are satisfied:

- (1) The education and supervised experience requirements of the other jurisdiction are substantially the equivalent of this chapter, as described in subdivision (e) and in Section 4999.46.
- (2) The person complies with subdivision (b) of Section 4999.40, if applicable.
- (3) The person successfully completes the examinations required by the board pursuant to paragraph (3) of subdivision (a) of Section 4999.50. An applicant who obtained his or her license or registration under another jurisdiction by taking a national examination that is required by the board may apply for licensure with the board without retaking that examination if both of the following conditions are met:
 - (A) The applicant obtained a passing score on the national licensing examination that is required by the board.
 - (B) The applicant's license or registration in that jurisdiction is in good standing at the time of his or her application and has not been revoked, suspended, surrendered, denied, or otherwise restricted or encumbered as a result of any disciplinary proceeding brought by the licensing authority of that jurisdiction.
- (4) The person pays the required fees.

(c) Experience gained outside of California shall be accepted toward the licensure requirements if it is substantially equivalent to that required by this chapter. The board shall consider hours of experience obtained in another state during the six-year period immediately preceding the applicant's initial licensure by that state as a licensed professional clinical counselor.

(d) Education gained while residing outside of California shall be accepted toward the licensure requirements if it is substantially equivalent to the education requirements of this chapter, and if the applicant has completed the training or coursework required under subdivision (e) of Section 4999.32, which includes, in addition to the course described in subparagraph (I) of paragraph (1) of subdivision (c) of Section 4999.32, an 18-hour course in California law and professional ethics for professional clinical counselors.

(e) For purposes of this section, the board may, in its discretion, accept education as substantially equivalent if the applicant's education meets the requirements of Section 4999.32. If the applicant's degree does not contain the content or the overall units required by Section 4999.32, the board may, in its discretion, accept the applicant's education as substantially equivalent if the following criteria are satisfied:

- (1) The applicant's degree contains the required number of practicum units under paragraph (3) of subdivision (c) of Section 4999.32.
- (2) The applicant remediates his or her specific deficiency by completing the course content and units required by Section 4999.32.

(3) The applicant's degree otherwise complies with this section.

(f) This section shall become inoperative on January 1, ~~2014~~2015, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, ~~2014~~2015, deletes or extends that date.

Amend §4999.59

(a) This section applies to a person who applies for examination eligibility or registration between January 1, 2011, and December 31, ~~2013~~2014, inclusive, who meets both of the following requirements:

(1) At the time of application, holds a valid license described in paragraph (1) of subdivision (a) of Section 4999.58.

(2) Has held the license described in paragraph (1) for less than two years immediately preceding the date of application.

(b) Experience gained outside of California shall be accepted toward the licensure requirements if it is substantially equivalent to that required by this chapter, if the applicant complies with Section 4999.40, if applicable, and if the applicant has gained a minimum of 250 hours of supervised experience in direct counseling within California while registered as an intern with the board. The board shall consider hours of experience obtained in another state during the six-year period immediately preceding the applicant's initial licensure in that state as a professional clinical counselor.

(c) Education gained while residing outside of California shall be accepted toward the licensure requirements if it is substantially equivalent to the education requirements of this chapter, and if the applicant has completed the training or coursework required under subdivision (e) of Section 4999.32, which includes, in addition to the course described in subparagraph (I) of paragraph (1) of subdivision (c) of Section 4999.32, an 18-hour course in California law and professional ethics for professional clinical counselors.

(d) For purposes of this section, the board may, in its discretion, accept education as substantially equivalent if the applicant's education meets the requirements of Section 4999.32. If the applicant's degree does not contain the content or the overall units required by Section 4999.32, the board may, in its discretion, accept the applicant's education as substantially equivalent if the following criteria are satisfied:

(1) The applicant's degree contains the required number of practicum units under paragraph (3) of subdivision (c) of Section 4999.32.

(2) The applicant remediates his or her specific deficiency by completing the course content and units required by Section 4999.32.

(3) The applicant's degree otherwise complies with this section.

(e) An applicant who obtained his or her license or registration under another jurisdiction by taking a national examination that is required by the board may apply for licensure with the board without retaking that examination if both of the following conditions are met:

- (1) The applicant obtained a passing score on the national licensing examination that is required by the board.
 - (2) The applicant's license or registration in that jurisdiction is in good standing at the time of his or her application and has not been revoked, suspended, surrendered, denied, or otherwise restricted or encumbered as a result of any disciplinary proceeding brought by the licensing authority of that jurisdiction.
- (f) This section shall become inoperative on January 1, ~~2014~~2015, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, ~~2014~~2015, deletes or extends that date.

Amend §4999.60

- (a) This section applies to persons who are licensed outside of California and apply for examination eligibility on or after January 1, ~~2014~~2015.
- (b) The board may issue a license to a person who, at the time of submitting an application for a license pursuant to this chapter, holds a valid license as a professional clinical counselor, or other counseling license that allows the applicant to independently provide clinical mental health services, in another jurisdiction of the United States if all of the following conditions are satisfied:
- (1) The applicant's education is substantially equivalent, as defined in Section 4999.62.
 - (2) The applicant complies with subdivision (b) of Section 4999.40, if applicable.
 - (3) The applicant's supervised experience is substantially equivalent to that required for a license under this chapter. The board shall consider hours of experience obtained outside of California during the six-year period immediately preceding the date the applicant initially obtained the license described above.
 - (4) The applicant passes the examinations required to obtain a license under this chapter. An applicant who obtained his or her license or registration under another jurisdiction may apply for licensure with the board without taking the clinical examination if both of the following conditions are met:
 - (A) The applicant obtained a passing score on the licensing examination set forth in regulation as accepted by the board.
 - (B) The applicant's license or registration in that jurisdiction is in good standing at the time of his or her application and has not been revoked, suspended, surrendered, denied, or otherwise restricted or encumbered as a result of any disciplinary proceeding brought by the licensing authority of that jurisdiction.

Amend §4999.61

- (a) This section applies to persons who apply for examination eligibility or registration on or after January 1, ~~2014~~2015, and who do not hold a license as described in Section 4999.60.

(b) The board shall accept education gained while residing outside of California for purposes of satisfying licensure or registration requirements if the education is substantially equivalent, as defined in Section 4999.62, and the applicant complies with subdivision (b) of Section 4999.40, if applicable.

(c) The board shall accept experience gained outside of California for purposes of satisfying licensure or registration requirements if the experience is substantially equivalent to that required by this chapter.

Amend 4999.62

(a) This section applies to persons who apply for examination eligibility or registration on or after January 1, ~~2014~~2015.

(b) For purposes of Sections 4999.60 and 4999.61, education is substantially equivalent if all of the following requirements are met:

(1) The degree is obtained from an accredited or approved institution, as defined in Section 4999.12, and consists of, at a minimum, 48 semester or 72 quarter units, including, but not limited to, both of the following:

(A) Six semester or nine quarter units of practicum, including, but not limited to, a minimum of 280 hours of face-to-face counseling.

(B) The required areas of study listed in subparagraphs (A) to (M), inclusive, of paragraph (1) of subdivision (c) of Section 4999.33.

(2) The applicant completes any units and course content requirements under Section 4999.33 not already completed in his or her education.

(3) The applicant completes credit level coursework from a degree-granting institution that provides all of the following:

(A) Instruction regarding the principles of mental health recovery-oriented care and methods of service delivery in recovery model practice environments.

(B) An understanding of various California cultures and the social and psychological implications of socioeconomic position.

(C) Structured meeting with various consumers and family members of consumers of mental health services to enhance understanding of their experience of mental illness, treatment, and recovery.

(D) Instruction in behavioral addiction and co-occurring substance abuse and mental health disorders, as specified in subparagraph (K) of paragraph (1) of subdivision (c) of Section 4999.33.

(4) The applicant completes, in addition to the course described in subparagraph (I) of paragraph (1) of subdivision (c) of Section 4999.33, an 18-hour course in California law and professional ethics that includes, but is not limited to, instruction in advertising, scope of practice, scope of competence, treatment of minors, confidentiality, dangerous clients, psychotherapist-client privilege, recordkeeping, client access to records, state and federal laws

relating to confidentiality of patient health information, dual relationships, child abuse, elder and dependent adult abuse, online therapy, insurance reimbursement, civil liability, disciplinary actions and unprofessional conduct, ethics complaints and ethical standards, termination of therapy, standards of care, relevant family law, and therapist disclosures to clients.

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**ATTACHMENT B
PROPOSED LANGUAGE
AMENDMENTS TO EDUCATIONAL REQUIREMENTS FOR OUT-OF-STATE LMFT AND
LPCC APPLICANTS**

LMFTs

Amend §4980.72

(a) This section applies to persons who are licensed outside of California and apply for licensure on or after January 1, ~~2014~~[2015](#).

(b) The board may issue a license to a person who, at the time of submitting an application for a license pursuant to this chapter, holds a valid license issued by a board of marriage counselor examiners, board of marriage and family therapists, or corresponding authority, of any state or country, if all of the following conditions are satisfied:

(1) The applicant's education is substantially equivalent, as defined in Section ~~4980.78~~[4980.79](#). The applicant's degree title need not be identical to that required by Section 4980.36 or 4980.37.

(2) The applicant complies with Section 4980.76, if applicable.

(3) The applicant's supervised experience is substantially equivalent to that required for a license under this chapter. The board shall consider hours of experience obtained outside of California during the six-year period immediately preceding the date the applicant initially obtained the license described above.

(4) The applicant passes the examinations required to obtain a license under this chapter.

Amend §4980.74

(a) This section applies to persons who apply for licensure or registration on or after January 1, ~~2014~~[2015](#), and who do not hold a license as described in Section 4980.72.

(b) The board shall accept education gained while residing outside of California for purposes of satisfying licensure or registration requirements if the education is substantially equivalent, as defined in Section 4980.78, and the applicant complies with Section 4980.76, if applicable. The applicant's degree title need not be identical to that required by Section 4980.36 or 4980.37.

(c) The board shall accept experience gained outside of California for purposes of satisfying licensure or registration requirements if the experience is substantially equivalent to that required by this chapter.

Amend §4980.78. (UNLICENSED OUT OF STATE)

(a) This section applies to persons who apply for licensure or registration on or after January 1, ~~2014~~2015, and who do not hold a license as described in [Section 4980.72](#).

(b) For purposes of Sections ~~4980.72 and~~ 4980.74, education is substantially equivalent if all of the following requirements are met:

(1) The degree is obtained from a school, college, or university accredited by an accrediting agency recognized by the United States Department of Education and consists of, at a minimum, 48 semester or 72 quarter units, including, but not limited to, both of the following:

(A) Six semester or nine quarter units of practicum, including, but not limited to, a minimum of 150 hours of face-to-face counseling, and an additional 75 hours of either face-to-face counseling or client-centered advocacy, as specified in subsection (B) of paragraph (1) of subdivision (d) of Section 4980.36.

(B) Twelve semester or 18 quarter units in the areas of marriage, family, and child counseling and marital and family systems approaches to treatment, as specified in subparagraph (A) of paragraph (1) of subdivision (d) of Section 4980.36.

(2) The applicant completes a course in California law and professional ethics. The content of the course shall include, but not be limited to, advertising, scope of practice, scope of competence, treatment of minors, confidentiality, dangerous patients, psychotherapist-patient privilege, recordkeeping, patient access to records, the Health Insurance Portability and Accountability Act, dual relationships, child abuse, elder and dependent adult abuse, online therapy, insurance reimbursement, civil liability, disciplinary actions and unprofessional conduct, ethics complaints and ethical standards, termination of therapy, standards of care, relevant family law, therapist disclosures to patients, differences in legal and ethical standards in different types of work settings, and licensing law and licensing process.

~~(2)~~(3) The applicant completes any units required under subdivision (d) of Section 4980.36, and any course content requirements under specified in paragraph (2) of subdivision (d) of Section 4980.36 not already completed in his or her education. The total number of units shall be no less than 60 semester units or 90 quarter units. The coursework may be from an accredited school, college or university as specified in paragraph (1) above, from an educational institution approved by the Bureau for Private Postsecondary Education, or from a continuing education provider that is acceptable to the Board as defined in Section 4980.54.

~~(3)~~(4) The applicant completes the following credit-level coursework not already completed in his or her education from a degree-granting institution that provides all of the following: from an accredited school, college or university as specified in paragraph (1) above, from an educational institution approved by the Bureau for Private Postsecondary Education, or from a continuing education provider that is acceptable to the Board as defined in Section 4980.54:

(A) Instruction regarding the principles of mental health recovery-oriented care and

methods of service delivery in recovery model practice environments.

(B) An understanding of various California cultures and the social and psychological implications of socioeconomic position.

(C) Structured meeting with various consumers and family members of consumers of mental health services to enhance understanding of their experience of mental illness, treatment, and recovery.

(D) Instruction in addiction and co-occurring substance abuse and mental health disorders, as specified in subparagraph (I) of paragraph (2) of subdivision (d) of Section 4980.36.

~~(4) The applicant completes a course in California law and professional ethics. The content of the course shall include, but not be limited to, advertising, scope of practice, scope of competence, treatment of minors, confidentiality, dangerous patients, psychotherapist-patient privilege, recordkeeping, patient access to records, the Health Insurance Portability and Accountability Act, dual relationships, child abuse, elder and dependent adult abuse, online therapy, insurance reimbursement, civil liability, disciplinary actions and unprofessional conduct, ethics complaints and ethical standards, termination of therapy, standards of care, relevant family law, therapist disclosures to patients, differences in legal and ethical standards in different types of work settings, and licensing law and licensing process.~~

(5) An applicant for registration may complete any units and course content requirements required under paragraphs (3) and (4) not already completed in his or her education while registered as an intern.

~~(5)~~(6) The applicant's degree title need not be identical to that required by subdivision (b) of Section 4980.36.

Add §4980.79. (LICENSED OUT OF STATE)

(a) This section applies to persons who apply for licensure on or after January 1, 2015, and who hold a license as described in Section 4980.72.

(b) For purposes of Section 4980.72, education is substantially equivalent if all of the following requirements are met:

(1) The degree is obtained from a school, college, or university accredited by an accrediting agency recognized by the United States Department of Education and consists of, at a minimum, 48 semester or 72 quarter units, including, but not limited to, both of the following:

(A) Six semester or nine quarter units of practicum, including, but not limited to, a minimum of 150 hours of face-to-face counseling, and an additional 75 hours of either face-to-face counseling or client-centered advocacy, as specified in subsection (B) of paragraph (1) of subdivision (d) of Section 4980.36.

(B) Twelve semester or 18 quarter units in the areas of marriage, family, and child counseling and marital and family systems approaches to treatment, as specified in subparagraph (A) of paragraph (1) of subdivision (d) of Section 4980.36.

(2) The applicant completes a course in California law and professional ethics. The content of the course shall include, but not be limited to, advertising, scope of practice, scope of competence, treatment of minors, confidentiality, dangerous patients, psychotherapist-patient privilege, recordkeeping, patient access to records, the Health Insurance Portability and Accountability Act, dual relationships, child abuse, elder and dependent adult abuse, online therapy, insurance reimbursement, civil liability, disciplinary actions and unprofessional conduct, ethics complaints and ethical standards, termination of therapy, standards of care, relevant family law, therapist disclosures to patients, differences in legal and ethical standards in different types of work settings, and licensing law and licensing process.

(3) The applicant completes any course content requirements specified in paragraph (2) of subdivision (d) of Section 4980.36 not already completed in his or her education. This coursework may be from an accredited school, college or university as specified in paragraph (1) above, from an educational institution approved by the Bureau for Private Postsecondary Education, or from a continuing education provider that is acceptable to the Board as defined in Section 4980.54.

(4) The applicant completes the following coursework not already completed in his or her education from an accredited school, college or university as specified in paragraph (1) above, from an educational institution approved by the Bureau for Private Postsecondary Education, or from a continuing education provider that is acceptable to the Board as defined in Section 4980.54:

(A) Instruction regarding the principles of mental health recovery-oriented care and methods of service delivery in recovery model practice environments.

(B) An understanding of various California cultures and the social and psychological implications of socioeconomic position.

(C) Structured meeting with various consumers and family members of consumers of mental health services to enhance understanding of their experience of mental illness, treatment, and recovery.

(D) Instruction in addiction and co-occurring substance abuse and mental health disorders, as specified in subparagraph (I) of paragraph (2) of subdivision (d) of Section 4980.36.

(5) The applicant's degree title need not be identical to that required by subdivision (b) of Section 4980.36.

Amend §4980.80

(a) This section applies to persons who apply for licensure between January 1, 2010, and December 31, ~~2013~~2014, inclusive.

(b) The board may issue a license to a person who, at the time of application, holds a valid license issued by a board of marriage counselor examiners, marriage therapist examiners, or corresponding authority of any state, if all of the following requirements are satisfied:

- (1) The person has held that license for at least two years immediately preceding the date of application.
- (2) The education and supervised experience requirements are substantially the equivalent of this chapter.
- (3) The person complies with Section 4980.76, if applicable.
- (4) The person successfully completes the board administered licensing examinations as specified by subdivision (d) of Section 4980.40 and pays the fees specified.
- (5) The person completes all of the following coursework or training:
 - (A) (i) An applicant who completed a two semester or three quarter unit course in law and professional ethics for marriage and family therapists that included areas of study as specified in Section 4980.41 as part of his or her qualifying degree shall complete an 18-hour course in California law and professional ethics that includes, but is not limited to, the following subjects: advertising, scope of practice, scope of competence, treatment of minors, confidentiality, dangerous patients, psychotherapist-patient privilege, recordkeeping, patient access to records, requirements of the Health Insurance Portability and Accountability Act of 1996, dual relationships, child abuse, elder and dependent adult abuse, online therapy, insurance reimbursement, civil liability, disciplinary actions and unprofessional conduct, ethics complaints and ethical standards, termination of therapy, standards of care, relevant family law, and therapist disclosures to patients.
 - (ii) An applicant who has not completed a two semester or three quarter unit course in law and professional ethics for marriage and family therapists that included areas of study as specified in Section 4980.41 as part of his or her qualifying degree, shall complete a two semester or three quarter unit course in California law and professional ethics that includes, at minimum, the areas of study specified in Section 4980.41.
- (B) A minimum of seven contact hours of training or coursework in child abuse assessment and reporting as specified in Section 28 and any regulations promulgated thereunder.
- (C) A minimum of 10 contact hours of training or coursework in human sexuality as specified in Section 25 and any regulations promulgated thereunder.
- (D) A minimum of 15 contact hours of training or coursework in alcoholism and other chemical substance dependency as specified by regulation.
- (E) (i) Instruction in spousal or partner abuse assessment, detection, and intervention. This instruction may be taken either in fulfillment of other requirements for licensure or in a separate course.
- (ii) A minimum of 15 contact hours of coursework or training in spousal or partner abuse assessment, detection, and intervention strategies.
- (F) A minimum of a two semester or three quarter unit survey course in psychological

testing

. This course may be taken either in fulfillment of other requirements for licensure or in a separate course.

(G) A minimum of a two semester or three quarter unit survey course in psychopharmacology. This course may be taken either in fulfillment of other requirements for licensure or in a separate course.

(H) With respect to human sexuality, alcoholism and other chemical substance dependency, spousal or partner abuse assessment, detection, and intervention, psychological testing, and psychopharmacology, the board may accept training or coursework acquired out of state.

(c) This section shall remain in effect only until January 1, ~~2014~~2015, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, ~~2014~~2015, deletes or extends that date.

Amend §4980.90

(a) This section applies to persons who apply for licensure between January 1, 2010, and December 31, ~~2013~~2014, inclusive.

(b) Experience gained outside of California shall be accepted toward the licensure requirements if it is substantially equivalent to that required by this chapter, if the applicant complies with Section 4980.76. if applicable, and if the applicant has gained a minimum of 250 hours of supervised experience in direct counseling within California while registered as an intern with the board. The board shall consider hours of experience obtained in another state during the six-year period immediately preceding the applicant's initial licensure by that state as a marriage and family therapist.

(c) Education gained while residing outside of California shall be accepted toward the licensure requirements if it is substantially equivalent to the education requirements of this chapter, and if the applicant has completed all of the following:

(1) A two semester or three quarter unit course in California law and professional ethics for marriage, family, and child counselors that shall include areas of study as specified in Section 4980.41.

(2) A minimum of seven contact hours of training or coursework in child abuse assessment and reporting as specified in Section 28 and any regulations promulgated thereunder.

(3) A minimum of 10 contact hours of training or coursework in sexuality as specified in Section 25 and any regulations promulgated thereunder.

(4) A minimum of 15 contact hours of training or coursework in alcoholism and other chemical substance dependency as specified by regulation.

(5) (A) Instruction in spousal or partner abuse assessment, detection, and intervention. This instruction may be taken either in fulfillment of other educational requirements for licensure or in a separate course.

- (B) A minimum of 15 contact hours of coursework or training in spousal or partner abuse assessment, detection, and intervention strategies.
- (6) A minimum of a two semester or three quarter unit survey course in psychological testing. This course may be taken either in fulfillment of other requirements for licensure or in a separate course.
- (7) A minimum of a two semester or three quarter unit survey course in psychopharmacology. This course may be taken either in fulfillment of other requirements for licensure or in a separate course.
- (8) With respect to human sexuality, alcoholism and other chemical substance dependency, spousal or partner abuse assessment, detection, and intervention, psychological testing, and psychopharmacology, the board may accept training or coursework acquired out of state.
- (d) For purposes of this section, the board may, in its discretion, accept education as substantially equivalent if the applicant meets both of the following requirements:
- (1) The applicant has been granted a degree in a single integrated program primarily designed to train marriage and family therapists.
- (2) The applicant's education meets the requirements of Sections 4980.37. The degree title need not be identical to those required by subdivision (b) of Section 4980.37. If the applicant's degree does not contain the content or overall units required by Section 4980.37, the board may, in its discretion, accept the applicant's education as substantially equivalent if the following criteria are satisfied:
- (A) The applicant's degree contains the required number of practicum units and coursework required in the areas of marriage, family, and child counseling and marital and family systems approaches to treatment as specified in Section 4980.37.
- (B) The applicant remediates his or her specific deficiency by completing the course content and the units required by Section 4980.37.
- (C) The applicant's degree otherwise complies with this section.
- (e) This section shall remain in effect only until January 1, ~~2014~~2015, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, ~~2014~~2015, deletes or extends that date.

LPCCs

Amend §4999.57

(a) This section applies to a person who applies for examination eligibility or registration between January 1, 2011, and December 31, ~~2013~~2014, inclusive, who does not hold a license described in subdivision (a) of Section 4999.58.

(b) Experience gained outside of California shall be accepted toward the licensure requirements if it is substantially equivalent to that required by this chapter, if the applicant complies with Section 4999.40, if applicable, and if the applicant has gained a minimum of 250 hours of supervised experience in direct counseling within California while registered as an intern with the board.

(c) Education gained while residing outside of California shall be accepted toward the licensure requirements if it is substantially equivalent to the education requirements of this chapter, and if the applicant has completed the training or coursework required under subdivision (e) of Section 4999.32, which includes, in addition to the course described in subparagraph (I) of paragraph (1) of subdivision (c) of Section 4999.32, an 18-hour course in California law and professional ethics for professional clinical counselors.

(d) For purposes of this section, the board may, in its discretion, accept education as substantially equivalent if the applicant's education meets the requirements of Section 4999.32. If the applicant's degree does not contain the content or the overall units required by Section 4999.32, the board may, in its discretion, accept the applicant's education as substantially equivalent if the following criteria are satisfied:

- (1) The applicant's degree contains the required number of practicum units under paragraph (3) of subdivision (c) of Section 4999.32.
- (2) The applicant remediates his or her specific deficiency by completing the course content and units required by Section 4999.32.
- (3) The applicant's degree otherwise complies with this section.

(e) This section shall become inoperative on January 1, ~~2014~~2015, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, ~~2014~~2015, deletes or extends that date.

Amend §4999.58

(a) This section applies to a person who applies for examination eligibility between January 1, 2011, and December 31, ~~2013~~2014, inclusive, and who meets both of the following requirements:

- (1) At the time of application, holds a valid license as a professional clinical counselor, or other counseling license that allows the applicant to independently provide clinical mental health services, in another jurisdiction of the United States.

- (2) Has held the license described in paragraph (1) for at least two years immediately preceding the date of application.
- (b) The board may issue a license to a person described in subdivision (a) if all of the following requirements are satisfied:
- (1) The education and supervised experience requirements of the other jurisdiction are substantially the equivalent of this chapter, as described in subdivision (e) and in Section 4999.46.
 - (2) The person complies with subdivision (b) of Section 4999.40, if applicable.
 - (3) The person successfully completes the examinations required by the board pursuant to paragraph (3) of subdivision (a) of Section 4999.50. An applicant who obtained his or her license or registration under another jurisdiction by taking a national examination that is required by the board may apply for licensure with the board without retaking that examination if both of the following conditions are met:
 - (A) The applicant obtained a passing score on the national licensing examination that is required by the board.
 - (B) The applicant's license or registration in that jurisdiction is in good standing at the time of his or her application and has not been revoked, suspended, surrendered, denied, or otherwise restricted or encumbered as a result of any disciplinary proceeding brought by the licensing authority of that jurisdiction.
 - (4) The person pays the required fees.
- (c) Experience gained outside of California shall be accepted toward the licensure requirements if it is substantially equivalent to that required by this chapter. The board shall consider hours of experience obtained in another state during the six-year period immediately preceding the applicant's initial licensure by that state as a licensed professional clinical counselor.
- (d) Education gained while residing outside of California shall be accepted toward the licensure requirements if it is substantially equivalent to the education requirements of this chapter, and if the applicant has completed the training or coursework required under subdivision (e) of Section 4999.32, which includes, in addition to the course described in subparagraph (I) of paragraph (1) of subdivision (c) of Section 4999.32, an 18-hour course in California law and professional ethics for professional clinical counselors.
- (e) For purposes of this section, the board may, in its discretion, accept education as substantially equivalent if the applicant's education meets the requirements of Section 4999.32. If the applicant's degree does not contain the content or the overall units required by Section 4999.32, the board may, in its discretion, accept the applicant's education as substantially equivalent if the following criteria are satisfied:
- (1) The applicant's degree contains the required number of practicum units under paragraph (3) of subdivision (c) of Section 4999.32.
 - (2) The applicant remediates his or her specific deficiency by completing the course content and units required by Section 4999.32.

(3) The applicant's degree otherwise complies with this section.

(f) This section shall become inoperative on January 1, ~~2014~~2015, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, ~~2014~~2015, deletes or extends that date.

Amend §4999.59

(a) This section applies to a person who applies for examination eligibility or registration between January 1, 2011, and December 31, ~~2013~~2014, inclusive, who meets both of the following requirements:

(1) At the time of application, holds a valid license described in paragraph (1) of subdivision (a) of Section 4999.58.

(2) Has held the license described in paragraph (1) for less than two years immediately preceding the date of application.

(b) Experience gained outside of California shall be accepted toward the licensure requirements if it is substantially equivalent to that required by this chapter, if the applicant complies with Section 4999.40, if applicable, and if the applicant has gained a minimum of 250 hours of supervised experience in direct counseling within California while registered as an intern with the board. The board shall consider hours of experience obtained in another state during the six-year period immediately preceding the applicant's initial licensure in that state as a professional clinical counselor.

(c) Education gained while residing outside of California shall be accepted toward the licensure requirements if it is substantially equivalent to the education requirements of this chapter, and if the applicant has completed the training or coursework required under subdivision (e) of Section 4999.32, which includes, in addition to the course described in subparagraph (l) of paragraph (1) of subdivision (c) of Section 4999.32, an 18-hour course in California law and professional ethics for professional clinical counselors.

(d) For purposes of this section, the board may, in its discretion, accept education as substantially equivalent if the applicant's education meets the requirements of Section 4999.32. If the applicant's degree does not contain the content or the overall units required by Section 4999.32, the board may, in its discretion, accept the applicant's education as substantially equivalent if the following criteria are satisfied:

(1) The applicant's degree contains the required number of practicum units under paragraph (3) of subdivision (c) of Section 4999.32.

(2) The applicant remediates his or her specific deficiency by completing the course content and units required by Section 4999.32.

(3) The applicant's degree otherwise complies with this section.

(e) An applicant who obtained his or her license or registration under another jurisdiction by taking a national examination that is required by the board may apply for licensure with the

board without retaking that examination if both of the following conditions are met:

- (1) The applicant obtained a passing score on the national licensing examination that is required by the board.
 - (2) The applicant's license or registration in that jurisdiction is in good standing at the time of his or her application and has not been revoked, suspended, surrendered, denied, or otherwise restricted or encumbered as a result of any disciplinary proceeding brought by the licensing authority of that jurisdiction.
- (f) This section shall become inoperative on January 1, ~~2014~~2015, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, ~~2014~~2015, deletes or extends that date.

Amend §4999.60

- (a) This section applies to persons who are licensed outside of California and apply for examination eligibility on or after January 1, ~~2014~~2015.
- (b) The board may issue a license to a person who, at the time of submitting an application for a license pursuant to this chapter, holds a valid license as a professional clinical counselor, or other counseling license that allows the applicant to independently provide clinical mental health services, in another jurisdiction of the United States if all of the following conditions are satisfied:
- (1) The applicant's education is substantially equivalent, as defined in Section ~~4999.62~~ 4999.63.
 - (2) The applicant complies with subdivision (b) of Section 4999.40, if applicable.
 - (3) The applicant's supervised experience is substantially equivalent to that required for a license under this chapter. The board shall consider hours of experience obtained outside of California during the six-year period immediately preceding the date the applicant initially obtained the license described above.
 - (4) The applicant passes the examinations required to obtain a license under this chapter. An applicant who obtained his or her license or registration under another jurisdiction may apply for licensure with the board without taking the clinical examination if both of the following conditions are met:
 - (A) The applicant obtained a passing score on the licensing examination set forth in regulation as accepted by the board.
 - (B) The applicant's license or registration in that jurisdiction is in good standing at the time of his or her application and has not been revoked, suspended, surrendered, denied, or otherwise restricted or encumbered as a result of any disciplinary proceeding brought by the licensing authority of that jurisdiction.

Amend §4999.61

(a) This section applies to persons who apply for examination eligibility or registration on or after January 1, ~~2014~~2015, and who do not hold a license as described in Section 4999.60.

(b) The board shall accept education gained while residing outside of California for purposes of satisfying licensure or registration requirements if the education is substantially equivalent, as defined in Section 4999.62, and the applicant complies with subdivision (b) of Section 4999.40, if applicable.

(c) The board shall accept experience gained outside of California for purposes of satisfying licensure or registration requirements if the experience is substantially equivalent to that required by this chapter.

Amend 4999.62 (UNLICENSED OUT OF STATE)

(a) This section applies to persons who apply for examination eligibility or registration on or after January 1, ~~2014~~2015, and who do not hold a license as described in Section 4999.60.

(b) For purposes of Sections ~~4999.60 and~~ 4999.61, education is substantially equivalent if all of the following requirements are met:

(1) The degree is obtained from an accredited or approved institution, as defined in Section 4999.12, and consists of, at a minimum, 48 semester or 72 quarter units, including, but not limited to, both of the following:

(A) Six semester or nine quarter units of practicum, including, but not limited to, a minimum of 280 hours of face-to-face counseling.

(B) The required areas of study listed in subparagraphs (A) to (M), inclusive, of paragraph (1) of subdivision (c) of Section 4999.33.

(i) An applicant whose degree is deficient in no more than three of the required areas of study listed in subparagraphs (A) to (M), inclusive, of paragraph (1) of subdivision (c) may satisfy those deficiencies by successfully completing graduate level coursework at an accredited or approved institution, as defined in Section 4999.12. Coursework taken to meet such deficiencies shall be the equivalent of three semester units or four and one-half quarter units of study.

(2) The applicant completes, in addition to the course described in subparagraph (I) of paragraph (1) of subdivision (c) of Section 4999.33, an 18-hour course in California law and professional ethics that includes, but is not limited to, instruction in advertising, scope of practice, scope of competence, treatment of minors, confidentiality, dangerous clients, psychotherapist-client privilege, recordkeeping, client access to records, state and federal laws relating to confidentiality of patient health information, dual relationships, child abuse, elder and dependent adult abuse, online therapy, insurance reimbursement, civil liability, disciplinary actions and unprofessional conduct, ethics complaints and ethical standards, termination of therapy, standards of care, relevant family law, and therapist disclosures to clients.

~~(2)(3)~~ The applicant completes any units required under subdivision (c) of Section 4999.33 not already completed in his or her education- as follows:

- (i) At least 15 semester units or 22.5 quarter units of advanced coursework to develop knowledge of specific treatment issues or special populations.
- (ii) The total number of units shall be no less than 60 semester or 90 quarter units.

Coursework shall be from an accredited or approved school, college, or university as defined in Section 4999.12.

(4) The applicant completes any coursework required under subdivision (d) of Section 4999.33 not already completed in his or her education. Coursework may be from an accredited or approved school, college, or university as defined in Section 4999.12, or from a continuing education provider that is acceptable to the Board as defined in Section 4999.76.

~~(3)~~(5) The applicant completes the following credit level coursework not already completed in his or her education from a degree-granting institution that provides all of the following: from an accredited or approved school, college, or university as defined in Section 4999.12, or from a continuing education provider that is acceptable to the Board as defined in Section 4999.76.

(A) Instruction regarding the principles of mental health recovery-oriented care and methods of service delivery in recovery model practice environments.

(B) An understanding of various California cultures and the social and psychological implications of socioeconomic position.

(C) Structured meeting with various consumers and family members of consumers of mental health services to enhance understanding of their experience of mental illness, treatment, and recovery.

(D) Instruction in behavioral addiction and co-occurring substance abuse and mental health disorders, as specified in subparagraph (K) of paragraph (1) of subdivision (c) of Section 4999.33.

~~(4) The applicant completes, in addition to the course described in subparagraph (I) of paragraph (1) of subdivision (c) of Section 4999.33, an 18-hour course in California law and professional ethics that includes, but is not limited to, instruction in advertising, scope of practice, scope of competence, treatment of minors, confidentiality, dangerous clients, psychotherapist-client privilege, recordkeeping, client access to records, state and federal laws relating to confidentiality of patient health information, dual relationships, child abuse, elder and dependent adult abuse, online therapy, insurance reimbursement, civil liability, disciplinary actions and unprofessional conduct, ethics complaints and ethical standards, termination of therapy, standards of care, relevant family law, and therapist disclosures to clients.~~

(6) An applicant for registration may complete any units and course content requirements required under paragraphs (3), (4), and (5) not already completed in his or her education while registered as an intern.

Amend 4999.63 (LICENSED OUT OF STATE)

(a) This section applies to persons who apply for examination eligibility on or after January 1, 2014/2015, and who hold a license as described in Section 4999.60.

(b) For purposes of Section 4999.60, education is substantially equivalent if all of the following requirements are met:

(1) The degree is obtained from an accredited or approved institution, as defined in Section

4999.12, and consists of, at a minimum, 48 semester or 72 quarter units, including, but not limited to, both of the following:

(A) Six semester or nine quarter units of practicum, including, but not limited to, a minimum of 280 hours of face-to-face counseling.

(B) The required areas of study listed in subparagraphs (A) to (M), inclusive, of paragraph (1) of subdivision (c) of Section 4999.33.

- (i) An applicant whose degree is deficient in no more than three of the required areas of study listed in subparagraphs (A) to (M), inclusive, of paragraph (1) of subdivision (c) may satisfy those deficiencies by successfully completing graduate level coursework at an accredited or approved institution, as defined in Section 4999.12. Coursework taken to meet such deficiencies shall be the equivalent of three semester units or four and one-half quarter units of study.

(2) The applicant completes, in addition to the course described in subparagraph (I) of paragraph (1) of subdivision (c) of Section 4999.33, an 18-hour course in California law and professional ethics that includes, but is not limited to, instruction in advertising, scope of practice, scope of competence, treatment of minors, confidentiality, dangerous clients, psychotherapist-client privilege, recordkeeping, client access to records, state and federal laws relating to confidentiality of patient health information, dual relationships, child abuse, elder and dependent adult abuse, online therapy, insurance reimbursement, civil liability, disciplinary actions and unprofessional conduct, ethics complaints and ethical standards, termination of therapy, standards of care, relevant family law, and therapist disclosures to clients.

(3) The applicant completes any coursework required under subdivision (d) of Section 4999.33 not already completed in his or her education. Coursework may be from an accredited or approved school, college, or university as defined in Section 4999.12, or from a continuing education provider that is acceptable to the Board as defined in Section 4999.76.

(4) The applicant completes the following coursework not already completed in his or her education from an accredited or approved school, college, or university as defined in Section 4999.12, or from a continuing education provider that is acceptable to the Board as defined in Section 4999.76:

(A) Instruction regarding the principles of mental health recovery-oriented care and methods of service delivery in recovery model practice environments.

(B) An understanding of various California cultures and the social and psychological implications of socioeconomic position.

(C) Structured meeting with various consumers and family members of consumers of mental health services to enhance understanding of their experience of mental illness, treatment, and recovery.

(D) Instruction in behavioral addiction and co-occurring substance abuse and mental health disorders, as specified in subparagraph (K) of paragraph (1) of subdivision (c) of Section 4999.33.

ATTACHMENT C
LAW FOR OUT-OF-STATE LMFT APPLICANTS

CURRENT REQUIREMENTS FOR OUT-OF STATE LMFT APPLICANTS

§4980.80. RECIPROCITY; EQUIVALENT REQUIREMENTS; PAYMENT OF FEES; FURTHER CONDITIONS; INOPERATIVE JANUARY 1, 2014

(a) This section applies to persons who apply for licensure between January 1, 2010, and December 31, 2013, inclusive.

(b) The board may issue a license to a person who, at the time of application, holds a valid license issued by a board of marriage counselor examiners, marriage therapist examiners, or corresponding authority of any state, if all of the following requirements are satisfied:

(1) The person has held that license for at least two years immediately preceding the date of application.

(2) The education and supervised experience requirements are substantially the equivalent of this chapter.

(3) The person complies with Section 4980.76, if applicable.

(4) The person successfully completes the board administered licensing examinations as specified by subdivision (d) of Section 4980.40 and pays the fees specified.

(5) The person completes all of the following coursework or training:

(A) (i) An applicant who completed a two semester or three quarter unit course in law and professional ethics for marriage and family therapists that does not meet the requirements of Section 4980.41 as part of his or her qualifying degree shall complete an 18-hour course in California law and professional ethics that includes, but is not limited to, the following subjects: advertising, scope of practice, scope of competence, treatment of minors, confidentiality, dangerous patients, psychotherapist-patient privilege, recordkeeping, patient access to records, state and federal laws relating to the confidentiality of patient health information, dual relationships, child abuse, elder and dependent adult abuse, online therapy, insurance reimbursement, civil liability, disciplinary actions and unprofessional conduct, ethics complaints and ethical standards, termination of therapy, standards of care, relevant family law, and therapist disclosures to patients.

(ii) An applicant who has not completed a two semester or three quarter unit course in law and professional ethics for marriage and family therapists that included areas of study as specified in Section 4980.41 as part of his or her qualifying degree, shall complete a two semester or three

quarter unit course in California law and professional ethics that includes, at minimum, the areas of study specified in Section 4980.41.

(B) A minimum of seven contact hours of training or coursework in child abuse assessment and reporting as specified in Section 28 and any regulations promulgated thereunder.

(C) A minimum of 10 contact hours of training or coursework in human sexuality as specified in Section 25 and any regulations promulgated thereunder.

(D) A minimum of 15 contact hours of training or coursework in alcoholism and other chemical substance dependency as specified by regulation.

(E) (i) Instruction in spousal or partner abuse assessment, detection, and intervention. This instruction may be taken either in fulfillment of other requirements for licensure or in a separate course.

(ii) A minimum of 15 contact hours of coursework or training in spousal or partner abuse assessment, detection, and intervention strategies.

(F) A minimum of a two semester or three quarter unit survey course in psychological testing. This course may be taken either in fulfillment of other requirements for licensure or in a separate course.

(G) A minimum of a two semester or three quarter unit survey course in psychopharmacology. This course may be taken either in fulfillment of other requirements for licensure or in a separate course.

(H) With respect to human sexuality, alcoholism and other chemical substance dependency, spousal or partner abuse assessment, detection, and intervention, psychological testing, and psychopharmacology, the board may accept training or coursework acquired out of state.

(c) This section shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date.

§4980.90. ACCEPTANCE OF EDUCATION AND EXPERIENCE GAINED WHILE RESIDING OUTSIDE OF CALIFORNIA; INOPERATIVE JANUARY 1, 2014

(a) This section applies to persons who apply for licensure between January 1, 2010, and December 31, 2013, inclusive.

(b) Experience gained outside of California shall be accepted toward the licensure requirements if it is substantially equivalent to that required by this chapter, if the applicant complies with Section 4980.76. if applicable, and if the applicant has gained a minimum of 250 hours of supervised experience in direct counseling within California while registered as an intern with the

board. The board shall consider hours of experience obtained in another state during the six-year period immediately preceding the applicant's initial licensure by that state as a marriage and family therapist.

(c) Education gained while residing outside of California shall be accepted toward the licensure requirements if it is substantially equivalent to the education requirements of this chapter, and if the applicant has completed all of the following:

(1) A two semester or three quarter unit course in California law and professional ethics for marriage, family, and child counselors that shall include areas of study as specified in Section 4980.41.

(2) A minimum of seven contact hours of training or coursework in child abuse assessment and reporting as specified in Section 28 and any regulations promulgated thereunder.

(3) A minimum of 10 contact hours of training or coursework in sexuality as specified in Section 25 and any regulations promulgated thereunder.

(4) A minimum of 15 contact hours of training or coursework in alcoholism and other chemical substance dependency as specified by regulation.

(5) (A) Instruction in spousal or partner abuse assessment, detection, and intervention. This instruction may be taken either in fulfillment of other educational requirements for licensure or in a separate course.

(B) A minimum of 15 contact hours of coursework or training in spousal or partner abuse assessment, detection, and intervention strategies.

(6) A minimum of a two semester or three quarter unit survey course in psychological testing. This course may be taken either in fulfillment of other requirements for licensure or in a separate course.

(7) A minimum of a two semester or three quarter unit survey course in psychopharmacology. This course may be taken either in fulfillment of other requirements for licensure or in a separate course.

(8) With respect to human sexuality, alcoholism and other chemical substance dependency, spousal or partner abuse assessment, detection, and intervention, psychological testing, and psychopharmacology, the board may accept training or coursework acquired out of state.

(d) For purposes of this section, the board may, in its discretion, accept education as substantially equivalent if the applicant meets both of the following requirements:

(1) The applicant has been granted a degree in a single integrated program primarily designed to train marriage and family therapists.

(2) The applicant's education meets the requirements of Sections 4980.37. The degree title need not be identical to those required by subdivision (b) of Section 4980.37. If the applicant's degree does not contain the content or overall units required by Section 4980.37, the board may, in its discretion, accept the applicant's education as substantially equivalent if the following criteria are satisfied:

(A) The applicant's degree contains the required number of practicum units and coursework required in the areas of marriage, family, and child counseling and marital and family systems approaches to treatment as specified in Section 4980.37.

(B) The applicant remediates his or her specific deficiency by completing the course content and the units required by Section 4980.37.

(C) The applicant's degree otherwise complies with this section.

(e) This section shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date.

**§4980.37. QUALIFYING DEGREE PROGRAM FOR LICENSURE OR REGISTRATION;
BEGINNING GRADUATE STUDY BEFORE AUGUST 1, 2012 AND COMPLETING
GRADUATE STUDY BEFORE DECEMBER 31, 2018**

(a) This section shall apply to applicants for licensure or registration who begin graduate study before August 1, 2012, and complete that study on or before December 31, 2018. Those applicants may alternatively qualify under paragraph (2) of subdivision (a) of Section 4980.36.

(b) To qualify for a license or registration, applicants shall possess a doctor's or master's degree in marriage, family, and child counseling, marriage and family therapy, couple and family therapy, psychology, clinical psychology, counseling psychology, or counseling with an emphasis in either marriage, family, and child counseling or marriage and family therapy, obtained from a school, college, or university accredited by a regional accrediting agency recognized by the United States Department of Education or approved by the Bureau for Private Postsecondary Education. The board has the authority to make the final determination as to whether a degree meets all requirements, including, but not limited to, course requirements, regardless of accreditation or approval. In order to qualify for licensure pursuant to this section, a doctor's or master's degree program shall be a single, integrated program primarily designed to train marriage and family therapists and shall contain no less than 48 semester or 72 quarter units of instruction. This instruction shall include no less than 12 semester units or 18 quarter units of coursework in the areas of marriage, family, and child counseling, and marital and family systems approaches to treatment. The coursework shall include all of the following areas:

(1) The salient theories of a variety of psychotherapeutic orientations directly related to marriage and family therapy, and marital and family systems approaches to treatment.

(2) Theories of marriage and family therapy and how they can be utilized in order to intervene therapeutically with couples, families, adults, children, and groups.

(3) Developmental issues and life events from infancy to old age and their effect on individuals, couples, and family relationships. This may include coursework that focuses on specific family life events and the psychological, psychotherapeutic, and health implications that arise within couples and families, including, but not limited to, childbirth, child rearing, childhood, adolescence, adulthood, marriage, divorce, blended families, stepparenting, abuse and neglect of older and dependent adults, and geropsychology.

(4) A variety of approaches to the treatment of children. The board shall, by regulation, set forth the subjects of instruction required in this subdivision.

(c) (1) In addition to the 12 semester or 18 quarter units of coursework specified in subdivision (b), the doctor's or master's degree program shall contain not less than six semester or nine quarter units of supervised practicum in applied psychotherapeutic technique, assessments, diagnosis, prognosis, and treatment of premarital, couple, family, and child relationships, including dysfunctions, healthy functioning, health promotion, and illness prevention, in a supervised clinical placement that provides supervised fieldwork experience within the scope of practice of a marriage and family therapist.

(2) For applicants who enrolled in a degree program on or after January 1, 1995, the practicum shall include a minimum of 150 hours of face-to-face experience counseling individuals, couples, families, or groups.

(3) The practicum hours shall be considered as part of the 48 semester or 72 quarter unit requirement.

(d) As an alternative to meeting the qualifications specified in subdivision (b), the board shall accept as equivalent degrees those master's or doctor's degrees granted by educational institutions whose degree program is approved by the Commission on Accreditation for Marriage and Family Therapy Education.

(e) In order to provide an integrated course of study and appropriate professional training, while allowing for innovation and individuality in the education of marriage and family therapists, a degree program that meets the educational qualifications for licensure or registration under this section shall do all of the following:

(1) Provide an integrated course of study that trains students generally in the diagnosis, assessment, prognosis, and treatment of mental disorders.

(2) Prepare students to be familiar with the broad range of matters that may arise within marriage and family relationships.

(3) Train students specifically in the application of marriage and family relationship counseling principles and methods.

(4) Encourage students to develop those personal qualities that are intimately related to the counseling situation such as integrity, sensitivity, flexibility, insight, compassion, and personal presence.

(5) Teach students a variety of effective psychotherapeutic techniques and modalities that may be utilized to improve, restore, or maintain healthy individual, couple, and family relationships.

(6) Permit an emphasis or specialization that may address any one or more of the unique and complex array of human problems, symptoms, and needs of Californians served by marriage and family therapists.

(7) Prepare students to be familiar with cross-cultural mores and values, including a familiarity with the wide range of racial and ethnic backgrounds common among California's population, including, but not limited to, Blacks, Hispanics, Asians, and Native Americans.

(f) Educational institutions are encouraged to design the practicum required by this section to include marriage and family therapy experience in low-income and multicultural mental health settings.

(g) This section shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.

§4980.41. ELIGIBILITY TO SIT FOR LICENSING EXAMINATIONS; COURSEWORK OR TRAINING; INOPERATIVE JANUARY 1, 2019

(a) An applicant for licensure whose education qualifies him or her under Section 4980.37 shall complete the following coursework or training in order to be eligible to sit for the licensing examinations as specified in subdivision (d) of Section 4980.40:

(1) A two semester or three quarter unit course in California law and professional ethics for marriage and family therapists, which shall include, but not be limited to, the following areas of study:

(A) Contemporary professional ethics and statutory, regulatory, and decisional laws that delineate the profession's scope of practice.

(B) The therapeutic, clinical, and practical considerations involved in the legal and ethical practice of marriage and family therapy, including family law.

(C) The current legal patterns and trends in the mental health profession.

(D) The psychotherapist/patient privilege, confidentiality, the patient dangerous to self or others, and the treatment of minors with and without parental consent.

(E) A recognition and exploration of the relationship between a practitioner's sense of self and human values and his or her professional behavior and ethics.

This course may be considered as part of the 48 semester or 72 quarter unit requirements contained in Section 4980.37.

(2) A minimum of seven contact hours of training or coursework in child abuse assessment and reporting as specified in Section 28 and any regulations promulgated thereunder.

(3) A minimum of 10 contact hours of training or coursework in human sexuality as specified in Section 25, and any regulations promulgated thereunder. When coursework in a master's or doctor's degree program is acquired to satisfy this requirement, it shall be considered as part of the 48 semester or 72 quarter unit requirement contained in Section 4980.37.

(4) For persons who began graduate study on or after January 1, 1986, a master's or doctor's degree qualifying for licensure shall include specific instruction in alcoholism and other chemical substance dependency as specified by regulation. When coursework in a master's or doctor's degree program is acquired to satisfy this requirement, it shall be considered as part of the 48 semester or 72 quarter unit requirement contained in Section 4980.37.

(5) For persons who began graduate study during the period commencing on January 1, 1995, and ending on December 31, 2003, a master's or doctor's degree qualifying for licensure shall include coursework in spousal or partner abuse assessment, detection, and intervention. For persons who began graduate study on or after January 1, 2004, a master's or doctor's degree qualifying for licensure shall include a minimum of 15 contact hours of coursework in spousal or partner abuse assessment, detection, and intervention strategies, including knowledge of community resources, cultural factors, and same gender abuse dynamics. Coursework required under this subdivision may be satisfactory if taken either in fulfillment of other educational requirements for licensure or in a separate course. The requirement for coursework shall be satisfied by, and the board shall accept in satisfaction of the requirement, a certification from the chief academic officer of the educational institution from which the applicant graduated that the required coursework is included within the institution's required curriculum for graduation.

(6) For persons who began graduate study on or after January 1, 2001, an applicant shall complete a minimum of a two semester or three quarter unit survey course in psychological testing. When coursework in a master's or doctor's degree program is acquired to satisfy this requirement, it may be considered as part of the 48 semester or 72 quarter unit requirement of Section 4980.37.

(7) For persons who began graduate study on or after January 1, 2001, an applicant shall complete a minimum of a two semester or three quarter unit survey course in psychopharmacology. When coursework in a master's or doctor's degree program is acquired to satisfy this requirement, it may be considered as part of the 48 semester or 72 quarter unit requirement of Section 4980.37.

(8) The requirements added by paragraphs (6) and (7) are intended to improve the educational qualifications for licensure in order to better prepare future licentiates for practice and are not intended in any way to expand or restrict the scope of licensure for marriage and family therapists.

(b) This section shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.

REQUIREMENTS FOR OUT-OF STATE LMFT APPLICANTS EFFECTIVE JANUARY 1, 2014

§4980.78. SUBSTANTIALLY EQUIVALENT EDUCATION; ADDITIONAL COURSEWORK; EFFECTIVE JANUARY 1, 2014

(a) This section applies to persons who apply for licensure or registration on or after January 1, 2014.

(b) For purposes of Sections 4980.72 and 4980.74, education is substantially equivalent if all of the following requirements are met:

(1) The degree is obtained from a school, college, or university accredited by an accrediting agency recognized by the United States Department of Education and consists of, at a minimum, 48 semester or 72 quarter units, including, but not limited to, both of the following:

(A) Six semester or nine quarter units of practicum, including, but not limited to, a minimum of 150 hours of face-to-face counseling.

(B) Twelve semester or 18 quarter units in the areas of marriage, family, and child counseling and marital and family systems approaches to treatment, as specified in subparagraph (A) of paragraph (1) of subdivision (d) of Section 4980.36.

(2) The applicant completes any units and course content requirements under subdivision (d) of Section 4980.36 not already completed in his or her education.

(3) The applicant completes credit level coursework from a degree-granting institution that provides all of the following:

(A) Instruction regarding the principles of mental health recovery-oriented care and methods of service delivery in recovery model practice environments.

(B) An understanding of various California cultures and the social and psychological implications of socioeconomic position.

(C) Structured meeting with various consumers and family members of consumers of mental health services to enhance understanding of their experience of mental illness, treatment, and recovery.

(D) Instruction in addiction and co-occurring substance abuse and mental health disorders, as specified in subparagraph (I) of paragraph (2) of subdivision (d) of Section 4980.36.

(4) The applicant completes an 18-hour course in California law and professional ethics. The content of the course shall include, but not be limited to, advertising, scope of practice, scope of competence, treatment of minors, confidentiality, dangerous patients, psychotherapist-patient

privilege, recordkeeping, patient access to records, state and federal laws relating to confidentiality of patient health information, dual relationships, child abuse, elder and dependent adult abuse, online therapy, insurance reimbursement, civil liability, disciplinary actions and unprofessional conduct, ethics complaints and ethical standards, termination of therapy, standards of care, relevant family law, therapist disclosures to patients, differences in legal and ethical standards in different types of work settings, and licensing law and licensing process.

(5) The applicant's degree title need not be identical to that required by subdivision (b) of Section 4980.36.

§4980.36 QUALIFYING DEGREE PROGRAM FOR LICENSURE OR REGISTRATION; BEGINNING GRADUATE STUDY AFTER AUGUST 1, 2012 OR COMPLETING GRADUATE STUDY AFTER DECEMBER 31, 2018

(a) This section shall apply to the following:

(1) Applicants for licensure or registration who begin graduate study before August 1, 2012, and do not complete that study on or before December 31, 2018.

(2) Applicants for licensure or registration who begin graduate study before August 1, 2012, and who graduate from a degree program that meets the requirements of this section.

(3) Applicants for licensure or registration who begin graduate study on or after August 1, 2012.

(b) To qualify for a license or registration, applicants shall possess a doctor's or master's degree meeting the requirements of this section in marriage, family, and child counseling, marriage and family therapy, couple and family therapy, psychology, clinical psychology, counseling psychology, or counseling with an emphasis in either marriage, family, and child counseling or marriage and family therapy, obtained from a school, college, or university approved by the Bureau for Private Postsecondary Education or accredited by either the Commission on the Accreditation of Marriage and Family Therapy Education or a regional accrediting agency recognized by the United States Department of Education. The board has the authority to make the final determination as to whether a degree meets all requirements, including, but not limited to, course requirements, regardless of accreditation or approval.

(c) A doctor's or master's degree program that qualifies for licensure or registration shall do the following:

(1) Integrate all of the following throughout its curriculum:

(A) Marriage and family therapy principles.

(B) The principles of mental health recovery-oriented care and methods of service delivery in recovery-oriented practice environments, among others.

- (C) An understanding of various cultures and the social and psychological implications of socioeconomic position, and an understanding of how poverty and social stress impact an individual's mental health and recovery.
- (2) Allow for innovation and individuality in the education of marriage and family therapists.
- (3) Encourage students to develop the personal qualities that are intimately related to effective practice, including, but not limited to, integrity, sensitivity, flexibility, insight, compassion, and personal presence.
- (4) Permit an emphasis or specialization that may address any one or more of the unique and complex array of human problems, symptoms, and needs of Californians served by marriage and family therapists.
- (5) Provide students with the opportunity to meet with various consumers and family members of consumers of mental health services to enhance understanding of their experience of mental illness, treatment, and recovery.
- (d) The degree described in subdivision (b) shall contain no less than 60 semester or 90 quarter units of instruction that includes, but is not limited to, the following requirements:
- (1) Both of the following:
- (A) No less than 12 semester or 18 quarter units of coursework in theories, principles, and methods of a variety of psychotherapeutic orientations directly related to marriage and family therapy and marital and family systems approaches to treatment and how these theories can be applied therapeutically with individuals, couples, families, adults, including elder adults, children, adolescents, and groups to improve, restore, or maintain healthy relationships.
- (B) Practicum that involves direct client contact, as follows:
- (i) A minimum of six semester or nine quarter units of practicum in a supervised clinical placement that provides supervised fieldwork experience.
- (ii) A minimum of 150 hours of face-to-face experience counseling individuals, couples, families, or groups.
- (iii) A student must be enrolled in a practicum course while counseling clients, except as specified in subdivision (c) of Section 4980.42.
- (iv) The practicum shall provide training in all of the following areas:
- (I) Applied use of theory and psychotherapeutic techniques.
- (II) Assessment, diagnosis, and prognosis.

(III) Treatment of individuals and premarital, couple, family, and child relationships, including trauma and abuse, dysfunctions, healthy functioning, health promotion, illness prevention, and working with families.

(IV) Professional writing, including documentation of services, treatment plans, and progress notes.

(V) How to connect people with resources that deliver the quality of services and support needed in the community.

(v) Educational institutions are encouraged to design the practicum required by this subparagraph to include marriage and family therapy experience in low-income and multicultural mental health settings.

(vi) In addition to the 150 hours required in clause (ii), 75 hours of either of the following:

(I) Client-centered advocacy, as defined in Section 4980.03.

(II) Face-to-face experience counseling individuals, couples, families, or groups.

(2) Instruction in all of the following:

(A) Diagnosis, assessment, prognosis, and treatment of mental disorders, including severe mental disorders, evidence-based practices, psychological testing, psychopharmacology, and promising mental health practices that are evaluated in peer reviewed literature.

(B) Developmental issues from infancy to old age, including instruction in all of the following areas:

(i) The effects of developmental issues on individuals, couples, and family relationships.

(ii) The psychological, psychotherapeutic, and health implications of developmental issues and their effects.

(iii) Aging and its biological, social, cognitive, and psychological aspects.

(iv) A variety of cultural understandings of human development.

(v) The understanding of human behavior within the social context of socioeconomic status and other contextual issues affecting social position.

(vi) The understanding of human behavior within the social context of a representative variety of the cultures found within California.

(vii) The understanding of the impact that personal and social insecurity, social stress, low educational levels, inadequate housing, and malnutrition have on human development.

(C) The broad range of matters and life events that may arise within marriage and family relationships and within a variety of California cultures, including instruction in all of the following:

- (i) Child and adult abuse assessment and reporting.
- (ii) Spousal or partner abuse assessment, detection, intervention strategies, and same-gender abuse dynamics.
- (iii) Cultural factors relevant to abuse of partners and family members.
- (iv) Childbirth, child rearing, parenting, and stepparenting.
- (v) Marriage, divorce, and blended families.
- (vi) Long-term care.
- (vii) End of life and grief.
- (viii) Poverty and deprivation.
- (ix) Financial and social stress.
- (x) Effects of trauma.
- (xi) The psychological, psychotherapeutic, community, and health implications of the matters and life events described in clauses (i) to (x), inclusive.

(D) Cultural competency and sensitivity, including a familiarity with the racial, cultural, linguistic, and ethnic backgrounds of persons living in California.

(E) Multicultural development and cross-cultural interaction, including experiences of race, ethnicity, class, spirituality, sexual orientation, gender, and disability, and their incorporation into the psychotherapeutic process.

(F) The effects of socioeconomic status on treatment and available resources.

(G) Resilience, including the personal and community qualities that enable persons to cope with adversity, trauma, tragedy, threats, or other stresses.

(H) Human sexuality, including the study of physiological, psychological, and social cultural variables associated with sexual behavior and gender identity, and the assessment and treatment of psychosexual dysfunction.

(I) Substance use disorders, co-occurring disorders, and addiction, including, but not limited to, instruction in all of the following:

- (i) The definition of substance use disorders, co-occurring disorders, and addiction. For purposes of this subparagraph, “co-occurring disorders” means a mental illness and substance abuse diagnosis occurring simultaneously in an individual.

- (ii) Medical aspects of substance use disorders and co-occurring disorders.
 - (iii) The effects of psychoactive drug use.
 - (iv) Current theories of the etiology of substance abuse and addiction.
 - (v) The role of persons and systems that support or compound substance abuse and addiction.
 - (vi) Major approaches to identification, evaluation, and treatment of substance use disorders, co-occurring disorders, and addiction, including, but not limited to, best practices.
 - (vii) Legal aspects of substance abuse.
 - (viii) Populations at risk with regard to substance use disorders and co-occurring disorders.
 - (ix) Community resources offering screening, assessment, treatment, and followup for the affected person and family.
 - (x) Recognition of substance use disorders, co-occurring disorders, and addiction, and appropriate referral.
 - (xi) The prevention of substance use disorders and addiction.
- (J) California law and professional ethics for marriage and family therapists, including instruction in all of the following areas of study:
- (i) Contemporary professional ethics and statutory, regulatory, and decisional laws that delineate the scope of practice of marriage and family therapy.
 - (ii) The therapeutic, clinical, and practical considerations involved in the legal and ethical practice of marriage and family therapy, including, but not limited to, family law.
 - (iii) The current legal patterns and trends in the mental health professions.
 - (iv) The psychotherapist-patient privilege, confidentiality, the patient dangerous to self or others, and the treatment of minors with and without parental consent.
 - (v) A recognition and exploration of the relationship between a practitioner's sense of self and human values and his or her professional behavior and ethics.
 - (vi) Differences in legal and ethical standards for different types of work settings.
 - (vii) Licensing law and licensing process.
- (e) The degree described in subdivision (b) shall, in addition to meeting the requirements of subdivision (d), include instruction in case management, systems of care for the severely mentally ill, public and private services and supports available for the severely mentally ill,

community resources for persons with mental illness and for victims of abuse, disaster and trauma response, advocacy for the severely mentally ill, and collaborative treatment. This instruction may be provided either in credit level coursework or through extension programs offered by the degree-granting institution.

(f) The changes made to law by this section are intended to improve the educational qualifications for licensure in order to better prepare future licentiates for practice, and are not intended to expand or restrict the scope of practice for marriage and family therapists.

**ATTACHMENT D
LAW FOR OUT-OF-STATE LPCC APPLICANTS**

CURRENT REQUIREMENTS FOR OUT-OF STATE LPCC APPLICANTS

§4999.57

(a) This section applies to a person who applies for examination eligibility or registration between January 1, 2011, and December 31, 2013, inclusive, who does not hold a license described in subdivision (a) of Section 4999.58.

(b) Experience gained outside of California shall be accepted toward the licensure requirements if it is substantially equivalent to that required by this chapter, if the applicant complies with Section 4999.40, if applicable, and if the applicant has gained a minimum of 250 hours of supervised experience in direct counseling within California while registered as an intern with the board.

(c) Education gained while residing outside of California shall be accepted toward the licensure requirements if it is substantially equivalent to the education requirements of this chapter, and if the applicant has completed the training or coursework required under subdivision (e) of Section 4999.32, which includes, in addition to the course described in subparagraph (I) of paragraph (1) of subdivision (c) of Section 4999.32, an 18-hour course in California law and professional ethics for professional clinical counselors.

(d) For purposes of this section, the board may, in its discretion, accept education as substantially equivalent if the applicant's education meets the requirements of Section 4999.32. If the applicant's degree does not contain the content or the overall units required by Section 4999.32, the board may, in its discretion, accept the applicant's education as substantially equivalent if the following criteria are satisfied:

(1) The applicant's degree contains the required number of practicum units under paragraph (3) of subdivision (c) of Section 4999.32.

(2) The applicant remediates his or her specific deficiency by completing the course content and units required by Section 4999.32.

(3) The applicant's degree otherwise complies with this section.

(e) This section shall become inoperative on January 1, 2014, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2014, deletes or extends that date.

§4999.58

(a) This section applies to a person who applies for examination eligibility between January 1, 2011, and December 31, 2013, inclusive, and who meets both of the following requirements:

(1) At the time of application, holds a valid license as a professional clinical counselor, or other

counseling license that allows the applicant to independently provide clinical mental health services, in another jurisdiction of the United States.

(2) Has held the license described in paragraph (1) for at least two years immediately preceding the date of application.

(b) The board may issue a license to a person described in subdivision (a) if all of the following requirements are satisfied:

(1) The education and supervised experience requirements of the other jurisdiction are substantially the equivalent of this chapter, as described in subdivision (e) and in Section 4999.46.

(2) The person complies with subdivision (b) of Section 4999.40, if applicable.

(3) The person successfully completes the examinations required by the board pursuant to paragraph (3) of subdivision (a) of Section 4999.50. An applicant who obtained his or her license or registration under another jurisdiction by taking a national examination that is required by the board may apply for licensure with the board without retaking that examination if both of the following conditions are met:

(A) The applicant obtained a passing score on the national licensing examination that is required by the board.

(B) The applicant's license or registration in that jurisdiction is in good standing at the time of his or her application and has not been revoked, suspended, surrendered, denied, or otherwise restricted or encumbered as a result of any disciplinary proceeding brought by the licensing authority of that jurisdiction.

(4) The person pays the required fees.

(c) Experience gained outside of California shall be accepted toward the licensure requirements if it is substantially equivalent to that required by this chapter. The board shall consider hours of experience obtained in another state during the six-year period immediately preceding the applicant's initial licensure by that state as a licensed professional clinical counselor.

(d) Education gained while residing outside of California shall be accepted toward the licensure requirements if it is substantially equivalent to the education requirements of this chapter, and if the applicant has completed the training or coursework required under subdivision (e) of Section 4999.32, which includes, in addition to the course described in subparagraph (l) of paragraph (1) of subdivision (c) of Section 4999.32, an 18-hour course in California law and professional ethics for professional clinical counselors.

(e) For purposes of this section, the board may, in its discretion, accept education as substantially equivalent if the applicant's education meets the requirements of Section 4999.32. If the applicant's degree does not contain the content or the overall units required by Section 4999.32, the board may, in its discretion, accept the applicant's education as substantially equivalent if the following criteria are satisfied:

(1) The applicant's degree contains the required number of practicum units under paragraph (3) of subdivision (c) of Section 4999.32.

(2) The applicant remediates his or her specific deficiency by completing the course content and units required by Section 4999.32.

(3) The applicant's degree otherwise complies with this section.

(f) This section shall become inoperative on January 1, 2014, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2014, deletes or extends that date.

§4999.59

(a) This section applies to a person who applies for examination eligibility or registration between January 1, 2011, and December 31, 2013, inclusive, who meets both of the following requirements:

(1) At the time of application, holds a valid license described in paragraph (1) of subdivision (a) of Section 4999.58.

(2) Has held the license described in paragraph (1) for less than two years immediately preceding the date of application.

(b) Experience gained outside of California shall be accepted toward the licensure requirements if it is substantially equivalent to that required by this chapter, if the applicant complies with Section 4999.40, if applicable, and if the applicant has gained a minimum of 250 hours of supervised experience in direct counseling within California while registered as an intern with the board. The board shall consider hours of experience obtained in another state during the six-year period immediately preceding the applicant's initial licensure in that state as a professional clinical counselor.

(c) Education gained while residing outside of California shall be accepted toward the licensure requirements if it is substantially equivalent to the education requirements of this chapter, and if the applicant has completed the training or coursework required under subdivision (e) of Section 4999.32, which includes, in addition to the course described in subparagraph (l) of paragraph (1) of subdivision (c) of Section 4999.32, an 18-hour course in California law and professional ethics for professional clinical counselors.

(d) For purposes of this section, the board may, in its discretion, accept education as substantially equivalent if the applicant's education meets the requirements of Section 4999.32. If the applicant's degree does not contain the content or the overall units required by Section 4999.32, the board may, in its discretion, accept the applicant's education as substantially equivalent if the following criteria are satisfied:

(1) The applicant's degree contains the required number of practicum units under paragraph (3) of subdivision (c) of Section 4999.32.

(2) The applicant remediates his or her specific deficiency by completing the course content and units required by Section 4999.32.

(3) The applicant's degree otherwise complies with this section.

(e) An applicant who obtained his or her license or registration under another jurisdiction by

taking a national examination that is required by the board may apply for licensure with the board without retaking that examination if both of the following conditions are met:

(1) The applicant obtained a passing score on the national licensing examination that is required by the board.

(2) The applicant's license or registration in that jurisdiction is in good standing at the time of his or her application and has not been revoked, suspended, surrendered, denied, or otherwise restricted or encumbered as a result of any disciplinary proceeding brought by the licensing authority of that jurisdiction.

(f) This section shall become inoperative on January 1, 2014, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2014, deletes or extends that date.

§4999.32.

(a) This section shall apply to applicants for examination eligibility or registration who begin graduate study before August 1, 2012, and complete that study on or before December 31, 2018. Those applicants may alternatively qualify under paragraph (2) of subdivision (a) of Section 4999.33.

(b) To qualify for examination eligibility or registration, applicants shall possess a master's or doctoral degree that is counseling or psychotherapy in content and that meets the requirements of this section, obtained from an accredited or approved institution, as defined in Section 4999.12. For purposes of this subdivision, a degree is "counseling or psychotherapy in content" if it contains the supervised practicum or field study experience described in paragraph (3) of subdivision (c) and, except as provided in subdivision (d), the coursework in the core content areas listed in subparagraphs (A) to (I), inclusive, of paragraph (1) of subdivision (c).

(c) The degree described in subdivision (b) shall contain not less than 48 graduate semester or 72 graduate quarter units of instruction, which shall, except as provided in subdivision (d), include all of the following:

(1) The equivalent of at least three semester units or four and one-half quarter units of graduate study in each of following core content areas:

(A) Counseling and psychotherapeutic theories and techniques, including the counseling process in a multicultural society, an orientation to wellness and prevention, counseling theories to assist in selection of appropriate counseling interventions, models of counseling consistent with current professional research and practice, development of a personal model of counseling, and multidisciplinary responses to crises, emergencies, and disasters.

(B) Human growth and development across the lifespan, including normal and abnormal behavior and an understanding of developmental crises, disability, psychopathology, and situational and environmental factors that affect both normal and abnormal behavior.

(C) Career development theories and techniques, including career development decisionmaking models and interrelationships among and between work, family, and other life roles and factors,

including the role of multicultural issues in career development.

(D) Group counseling theories and techniques, including principles of group dynamics, group process components, developmental stage theories, therapeutic factors of group work, group leadership styles and approaches, pertinent research and literature, group counseling methods, and evaluation of effectiveness.

(E) Assessment, appraisal, and testing of individuals, including basic concepts of standardized and nonstandardized testing and other assessment techniques, norm-referenced and criterion-referenced assessment, statistical concepts, social and cultural factors related to assessment and evaluation of individuals and groups, and ethical strategies for selecting, administering, and interpreting assessment instruments and techniques in counseling.

(F) Multicultural counseling theories and techniques, including counselors' roles in developing cultural self-awareness, identity development, promoting cultural social justice, individual and community strategies for working with and advocating for diverse populations, and counselors' roles in eliminating biases and prejudices, and processes of intentional and unintentional oppression and discrimination.

(G) Principles of the diagnostic process, including differential diagnosis, and the use of current diagnostic tools, such as the current edition of the Diagnostic and Statistical Manual, the impact of co-occurring substance use disorders or medical psychological disorders, established diagnostic criteria for mental or emotional disorders, and the treatment modalities and placement criteria within the continuum of care.

(H) Research and evaluation, including studies that provide an understanding of research methods, statistical analysis, the use of research to inform evidence-based practice, the importance of research in advancing the profession of counseling, and statistical methods used in conducting research, needs assessment, and program evaluation.

(I) Professional orientation, ethics, and law in counseling, including professional ethical standards and legal considerations, licensing law and process, regulatory laws that delineate the profession's scope of practice, counselor-client privilege, confidentiality, the client dangerous to self or others, treatment of minors with or without parental consent, relationship between practitioner's sense of self and human values, functions and relationships with other human service providers, strategies for collaboration, and advocacy processes needed to address institutional and social barriers that impede access, equity, and success for clients.

(2) In addition to the course requirements described in paragraph (1), a minimum of 12 semester units or 18 quarter units of advanced coursework to develop knowledge of specific treatment issues, special populations, application of counseling constructs, assessment and treatment planning, clinical interventions, therapeutic relationships, psychopathology, or other clinical topics.

(3) Not less than six semester units or nine quarter units of supervised practicum or field study experience, or the equivalent, in a clinical setting that provides a range of professional clinical counseling experience, including the following:

- (A) Applied psychotherapeutic techniques.
 - (B) Assessment.
 - (C) Diagnosis.
 - (D) Prognosis.
 - (E) Treatment.
 - (F) Issues of development, adjustment, and maladjustment.
 - (G) Health and wellness promotion.
 - (H) Other recognized counseling interventions.
 - (I) A minimum of 150 hours of face-to-face supervised clinical experience counseling individuals, families, or groups.
- (d) (1) An applicant whose degree is deficient in no more than two of the required areas of study listed in subparagraphs (A) to (I), inclusive, of paragraph (1) of subdivision (c) may satisfy those deficiencies by successfully completing post-master's or postdoctoral degree coursework at an accredited or approved institution, as defined in Section 4999.12.
- (2) Coursework taken to meet deficiencies in the required areas of study listed in subparagraphs (A) to (I), inclusive, of paragraph (1) of subdivision (c) shall be the equivalent of three semester units or four and one-half quarter units of study.
- (3) The board shall make the final determination as to whether a degree meets all requirements, including, but not limited to, course requirements, regardless of accreditation.
- (e) In addition to the degree described in this section, or as part of that degree, an applicant shall complete the following coursework or training prior to registration as an intern:
- (1) A minimum of 15 contact hours of instruction in alcoholism and other chemical substance abuse dependency, as specified by regulation.
 - (2) A minimum of 10 contact hours of training or coursework in human sexuality as specified in Section 25, and any regulations promulgated thereunder.
 - (3) A two semester unit or three quarter unit survey course in psychopharmacology.
 - (4) A minimum of 15 contact hours of instruction in spousal or partner abuse assessment, detection, and intervention strategies, including knowledge of community resources, cultural factors, and same gender abuse dynamics.
 - (5) A minimum of seven contact hours of training or coursework in child abuse assessment and reporting as specified in Section 28 and any regulations adopted thereunder.
 - (6) A minimum of 18 contact hours of instruction in California law and professional ethics for professional clinical counselors that includes, but is not limited to, instruction in advertising, scope of practice, scope of competence, treatment of minors, confidentiality, dangerous clients, psychotherapist-client privilege, recordkeeping, client access to records, dual relationships, child abuse, elder and dependent adult abuse, online therapy, insurance reimbursement, civil liability, disciplinary actions and unprofessional conduct, ethics complaints and ethical standards, termination of therapy, standards of care, relevant family law, therapist disclosures to clients, and state and federal laws related to confidentiality of patient health information. When

coursework in a master's or doctoral degree program is acquired to satisfy this requirement, it shall be considered as part of the 48 semester unit or 72 quarter unit requirement in subdivision (c).

(7) A minimum of 10 contact hours of instruction in aging and long-term care, which may include, but is not limited to, the biological, social, and psychological aspects of aging. On and after January 1, 2012, this coursework shall include instruction on the assessment and reporting of, as well as treatment related to, elder and dependent adult abuse and neglect.

(8) A minimum of 15 contact hours of instruction in crisis or trauma counseling, including multidisciplinary responses to crises, emergencies, or disasters, and brief, intermediate, and long-term approaches.

(f) This section shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2019, deletes or extends that date.

REQUIREMENTS FOR OUT-OF STATE LPCC APPLICANTS EFFECTIVE JANUARY 1, 2014

§4999.60

(a) This section applies to persons who are licensed outside of California and apply for examination eligibility on or after January 1, 2014.

(b) The board may issue a license to a person who, at the time of submitting an application for a license pursuant to this chapter, holds a valid license as a professional clinical counselor, or other counseling license that allows the applicant to independently provide clinical mental health services, in another jurisdiction of the United States if all of the following conditions are satisfied:

(1) The applicant's education is substantially equivalent, as defined in Section 4999.62.

(2) The applicant complies with subdivision (b) of Section 4999.40, if applicable.

(3) The applicant's supervised experience is substantially equivalent to that required for a license under this chapter. The board shall consider hours of experience obtained outside of California during the six-year period immediately preceding the date the applicant initially obtained the license described above.

(4) The applicant passes the examinations required to obtain a license under this chapter. An applicant who obtained his or her license or registration under another jurisdiction may apply for licensure with the board without taking the clinical examination if both of the following conditions are met:

(A) The applicant obtained a passing score on the licensing examination set forth in regulation as accepted by the board.

(B) The applicant's license or registration in that jurisdiction is in good standing at the time of his or her application and has not been revoked, suspended, surrendered, denied, or otherwise restricted or encumbered as a result of any disciplinary proceeding brought by the licensing authority of that jurisdiction.

§4999.61

(a) This section applies to persons who apply for examination eligibility or registration on or after January 1, 2014, and who do not hold a license as described in Section 4999.60.

(b) The board shall accept education gained while residing outside of California for purposes of satisfying licensure or registration requirements if the education is substantially equivalent, as defined in Section 4999.62, and the applicant complies with subdivision (b) of Section 4999.40, if applicable.

(c) The board shall accept experience gained outside of California for purposes of satisfying licensure or registration requirements if the experience is substantially equivalent to that required by this chapter.

4999.62

(a) This section applies to persons who apply for examination eligibility or registration on or after January 1, 2014.

(b) For purposes of Sections 4999.60 and 4999.61, education is substantially equivalent if all of the following requirements are met:

(1) The degree is obtained from an accredited or approved institution, as defined in Section 4999.12, and consists of, at a minimum, 48 semester or 72 quarter units, including, but not limited to, both of the following:

(A) Six semester or nine quarter units of practicum, including, but not limited to, a minimum of 280 hours of face-to-face counseling.

(B) The required areas of study listed in subparagraphs (A) to (M), inclusive, of paragraph (1) of subdivision (c) of Section 4999.33.

(2) The applicant completes any units and course content requirements under Section 4999.33 not already completed in his or her education.

(3) The applicant completes credit level coursework from a degree-granting institution that provides all of the following:

(A) Instruction regarding the principles of mental health recovery-oriented care and methods of service delivery in recovery model practice environments.

(B) An understanding of various California cultures and the social and psychological implications of socioeconomic position.

(C) Structured meeting with various consumers and family members of consumers of mental health services to enhance understanding of their experience of mental illness, treatment, and recovery.

(D) Instruction in behavioral addiction and co-occurring substance abuse and mental health disorders, as specified in subparagraph (K) of paragraph (1) of subdivision (c) of Section 4999.33.

(4) The applicant completes, in addition to the course described in subparagraph (I) of

paragraph (1) of subdivision (c) of Section 4999.33, an 18-hour course in California law and professional ethics that includes, but is not limited to, instruction in advertising, scope of practice, scope of competence, treatment of minors, confidentiality, dangerous clients, psychotherapist-client privilege, recordkeeping, client access to records, state and federal laws relating to confidentiality of patient health information, dual relationships, child abuse, elder and dependent adult abuse, online therapy, insurance reimbursement, civil liability, disciplinary actions and unprofessional conduct, ethics complaints and ethical standards, termination of therapy, standards of care, relevant family law, and therapist disclosures to clients.

§4999.33.

(a) This section shall apply to the following:

(1) Applicants for examination eligibility or registration who begin graduate study before August 1, 2012, and do not complete that study on or before December 31, 2018.

(2) Applicants for examination eligibility or registration who begin graduate study before August 1, 2012, and who graduate from a degree program that meets the requirements of this section.

(3) Applicants for examination eligibility or registration who begin graduate study on or after August 1, 2012.

(b) To qualify for examination eligibility or registration, applicants shall possess a master's or doctoral degree that is counseling or psychotherapy in content and that meets the requirements of this section, obtained from an accredited or approved institution, as defined in Section 4999.12. For purposes of this subdivision, a degree is "counseling or psychotherapy in content" if it contains the supervised practicum or field study experience described in paragraph (3) of subdivision (c) and, except as provided in subdivision (f), the coursework in the core content areas listed in subparagraphs (A) to (M), inclusive, of paragraph (1) of subdivision (c).

(c) The degree described in subdivision (b) shall contain not less than 60 graduate semester or 90 graduate quarter units of instruction, which shall, except as provided in subdivision (f), include all of the following:

(1) The equivalent of at least three semester units or four and one-half quarter units of graduate study in all of the following core content areas:

(A) Counseling and psychotherapeutic theories and techniques, including the counseling process in a multicultural society, an orientation to wellness and prevention, counseling theories to assist in selection of appropriate counseling interventions, models of counseling consistent with current professional research and practice, development of a personal model of counseling, and multidisciplinary responses to crises, emergencies, and disasters.

(B) Human growth and development across the lifespan, including normal and abnormal behavior and an understanding of developmental crises, disability, psychopathology, and

situational and environmental factors that affect both normal and abnormal behavior.

(C) Career development theories and techniques, including career development decisionmaking models and interrelationships among and between work, family, and other life roles and factors, including the role of multicultural issues in career development.

(D) Group counseling theories and techniques, including principles of group dynamics, group process components, group developmental stage theories, therapeutic factors of group work, group leadership styles and approaches, pertinent research and literature, group counseling methods, and evaluation of effectiveness.

(E) Assessment, appraisal, and testing of individuals, including basic concepts of standardized and nonstandardized testing and other assessment techniques, norm-referenced and criterion-referenced assessment, statistical concepts, social and cultural factors related to assessment and evaluation of individuals and groups, and ethical strategies for selecting, administering, and interpreting assessment instruments and techniques in counseling.

(F) Multicultural counseling theories and techniques, including counselors' roles in developing cultural self-awareness, identity development, promoting cultural social justice, individual and community strategies for working with and advocating for diverse populations, and counselors' roles in eliminating biases and prejudices, and processes of intentional and unintentional oppression and discrimination.

(G) Principles of the diagnostic process, including differential diagnosis, and the use of current diagnostic tools, such as the current edition of the Diagnostic and Statistical Manual, the impact of co-occurring substance use disorders or medical psychological disorders, established diagnostic criteria for mental or emotional disorders, and the treatment modalities and placement criteria within the continuum of care.

(H) Research and evaluation, including studies that provide an understanding of research methods, statistical analysis, the use of research to inform evidence-based practice, the importance of research in advancing the profession of counseling, and statistical methods used in conducting research, needs assessment, and program evaluation.

(I) Professional orientation, ethics, and law in counseling, including California law and professional ethics for professional clinical counselors, professional ethical standards and legal considerations, licensing law and process, regulatory laws that delineate the profession's scope of practice, counselor-client privilege, confidentiality, the client dangerous to self or others, treatment of minors with or without parental consent, relationship between practitioner's sense of self and human values, functions and relationships with other human service providers, strategies for collaboration, and advocacy processes needed to address institutional and social barriers that impede access, equity, and success for clients.

(J) Psychopharmacology, including the biological bases of behavior, basic classifications, indications, and contraindications of commonly prescribed psychopharmacological medications so that appropriate referrals can be made for medication evaluations and so that the side effects of those medications can be identified.

(K) Addictions counseling, including substance abuse, co-occurring disorders, and addiction, major approaches to identification, evaluation, treatment, and prevention of substance abuse

and addiction, legal and medical aspects of substance abuse, populations at risk, the role of support persons, support systems, and community resources.

(L) Crisis or trauma counseling, including crisis theory; multidisciplinary responses to crises, emergencies, or disasters; cognitive, affective, behavioral, and neurological effects associated with trauma; brief, intermediate, and long-term approaches; and assessment strategies for clients in crisis and principles of intervention for individuals with mental or emotional disorders during times of crisis, emergency, or disaster.

(M) Advanced counseling and psychotherapeutic theories and techniques, including the application of counseling constructs, assessment and treatment planning, clinical interventions, therapeutic relationships, psychopathology, or other clinical topics.

(2) In addition to the course requirements described in paragraph (1), 15 semester units or 22.5 quarter units of advanced coursework to develop knowledge of specific treatment issues or special populations.

(3) Not less than six semester units or nine quarter units of supervised practicum or field study experience, or the equivalent, in a clinical setting that provides a range of professional clinical counseling experience, including the following:

(A) Applied psychotherapeutic techniques.

(B) Assessment.

(C) Diagnosis.

(D) Prognosis.

(E) Treatment.

(F) Issues of development, adjustment, and maladjustment.

(G) Health and wellness promotion.

(H) Professional writing including documentation of services, treatment plans, and progress notes.

(I) How to find and use resources.

(J) Other recognized counseling interventions.

(K) A minimum of 280 hours of face-to-face supervised clinical experience counseling individuals, families, or groups.

(d) The 60 graduate semester units or 90 graduate quarter units of instruction required pursuant to subdivision (c) shall, in addition to meeting the requirements of subdivision (c), include instruction in all of the following:

(1) The understanding of human behavior within the social context of socioeconomic status

and other contextual issues affecting social position.

(2) The understanding of human behavior within the social context of a representative variety of the cultures found within California.

(3) Cultural competency and sensitivity, including a familiarity with the racial, cultural, linguistic, and ethnic backgrounds of persons living in California.

(4) An understanding of the effects of socioeconomic status on treatment and available resources.

(5) Multicultural development and cross-cultural interaction, including experiences of race, ethnicity, class, spirituality, sexual orientation, gender, and disability and their incorporation into the psychotherapeutic process.

(6) Case management, systems of care for the severely mentally ill, public and private services for the severely mentally ill, community resources for victims of abuse, disaster and trauma response, advocacy for the severely mentally ill, and collaborative treatment. The instruction required in this paragraph may be provided either in credit level coursework or through extension programs offered by the degree-granting institution.

(7) Human sexuality, including the study of the physiological, psychological, and social cultural variables associated with sexual behavior, gender identity, and the assessment and treatment of psychosexual dysfunction.

(8) Spousal or partner abuse assessment, detection, intervention strategies, and same-gender abuse dynamics.

(9) Child abuse assessment and reporting.

(10) Aging and long-term care, including biological, social, cognitive, and psychological aspects of aging. This coursework shall include instruction on the assessment and reporting of, as well as treatment related to, elder and dependent adult abuse and neglect.

(e) A degree program that qualifies for licensure under this section shall do all of the following:

(1) Integrate the principles of mental health recovery-oriented care and methods of service delivery in recovery-oriented practice environments.

(2) Integrate an understanding of various cultures and the social and psychological implications of socioeconomic position.

(3) Provide the opportunity for students to meet with various consumers and family members of consumers of mental health services to enhance understanding of their experience of mental illness, treatment, and recovery.

(f) (1) An applicant whose degree is deficient in no more than three of the required areas of study listed in subparagraphs (A) to (M), inclusive, of paragraph (1) of subdivision (c) may satisfy those deficiencies by successfully completing post-master's or postdoctoral degree coursework at an accredited or approved institution, as defined in Section 4999.12.

(2) Coursework taken to meet deficiencies in the required areas of study listed in subparagraphs (A) to (M), inclusive, of paragraph (1) of subdivision (c) shall be the equivalent of three semester units or four and one-half quarter units of study.

(3) The board shall make the final determination as to whether a degree meets all requirements, including, but not limited to, course requirements, regardless of accreditation.

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To: Committee Members

Date: October 17, 2012

From: Kim Madsen
Executive Officer

Telephone: (916) 574-7841

Subject: Proposed Revisions to California Family Code Sections 3111 and 3025.5

Background

Board licensees have assisted California Family Courts in resolving issues or concerns related to matters of child custody. In this role a Board licensee may serve as a child custody recommending counselor (formerly known as mediators), as a court connected child custody evaluator or as a private child custody evaluator. Each role has specific qualifications and requirements established through the Rules of the Court and the California Family Code.

The role of the child custody recommending counselor (commonly referred to as a mediator) is to assist parents in resolving their differences and to develop a plan agreeable to both parties. Although the child custody recommending counselor must meet specific criteria, he or she is not required to be licensed by the Board. In situations in which the parties cannot agree, the child custody recommending counselor prepares a recommendation. The child custody recommending counselor is permitted to submit either the plan or the recommendation to the court. The time appropriated for this service is not extensive and does not require an in depth assessment of the situation.

A court connected child custody evaluator or a private child custody evaluator has a more extensive role and must be licensed as a Marriage and Family Therapist, Clinical Social Worker, Psychologist, or a Physician that is either a Board certified Psychiatrist or has completed a residency in psychiatry [Family Code Section 3110.5(c)(1)(2)(3)(4)]. The evaluator has the task of conducting a comprehensive assessment (commonly referred to as an evaluation) to determine the best interest of the child in disputed custody or visitation rights.

Conducting an evaluation requires a significant amount of time. The Rules of the Court (Rule 5.220) specify the content each evaluation must include as well as a description of the work completed by the evaluator. Upon the conclusion of the evaluator's work, the evaluator prepares a written report that is submitted to the court. The court will base their decision regarding custody and visitation on this report.

Pursuant to Family Code Section 3025.5, the report submitted by the evaluator is considered confidential. The report may only be disclosed to the following persons:

- A party to the proceeding and his or her attorney;

- A federal or state law enforcement officer, judicial officer, court employee, or family court facilitator for the county in which the action was filed, or an employee or agent of that facilitator;
- Counsel appointed for the child pursuant to Family Code Section 3150;
- Any other person upon order of the court for good cause.

An individual releasing this report may be subject to sanctions by the Court [Family Code section 3111(d)].

Family Code section 3110.5(e) states a child custody evaluator who is licensed by the Medical Board of California, the Board of Psychology, or the Board of Behavioral Sciences shall be subject to disciplinary action by that board for unprofessional conduct, as defined in the licensing law applicable to that license.

The court advises individuals that if they have a complaint against a mediator or evaluator, to file a complaint with the court. Each court has its own procedures for filing a complaint. Further, the individual may express their complaint to the judge at the time of their hearing.

The individuals are also advised that if their complaint is about ethical conduct or licensing issues, they may contact the appropriate state licensing board. The Board of Behavioral Sciences is one of the state licensing boards listed.

The Board receives numerous complaints against licensees who provide evaluations or recommendations to the courts. The Board does not investigate complaints that involve a child custody recommending counselor (mediator), due their limited role. The Board will investigate complaints involving evaluators.

In all complaints, the source of the complaint alleges the licensee's conduct/recommendation is unprofessional or is unethical. As in all complaint investigations, the Board must obtain the relevant information to determine if a violation of the Board's statutes and regulations has occurred.

Since the nature of the complaint directly references the evaluator's report to the court, to fully investigate the allegations, the report is a critical piece of information. Often the Board will receive this report from the source of the complaint. In cases where the Board has received this report, the Board has proceeded with an investigation. These investigations are time intensive and involve the use of a Subject Matter Expert and at times, assistance from the Division of Investigation.

During series of discussions with the Administrative Office of the Courts, the Board was informed that it should not proceed with its investigation despite receiving the confidential report since the Board is not permitted access under current law. The inability to obtain all of the relevant documentation requires the Board to close its investigation. This outcome increases the individual's frustration not only with the courts, but also the Board.

April 19, 2012 Policy and Advocacy Committee Meeting

At the April 19, 2012 Policy and Advocacy Committee (Committee) meeting, the Committee and stakeholders discussed whether or not to pursue a legislative change to allow the Board access to this confidential report for investigative purposes. Following the discussion, the Committee directed staff to draft language to allow the Board access to the confidential report for investigative purposes.

Since the April 19, 2012 meeting, staff met with the Administrative Office of the Courts to develop language that allows the Board access to the report. Either from one of the parties currently permitted to have access to the report or directly from the court upon request from the Board.

Recommendation

Staff recommends conducting an open discussion regarding the proposed language to revise Family Code sections 3111 and 3025.5. If the Committee determines that the proposed language is appropriate, the Committee should direct staff to bring the proposal to the full Board for consideration.

Attachments

- A. Proposed language to revise Family Code section 3111
- B. Proposed language to revise Family Code section 3025.5

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Proposed Revisions to Family Code Section 3111

3111.

- (a) In any contested proceeding involving child custody or visitation rights, the court may appoint a child custody evaluator to conduct a child custody evaluation in cases where the court determines it is in the best interests of the child. The child custody evaluation shall be conducted in accordance with the standards adopted by the Judicial Council pursuant to Section 3117, and all other standards adopted by the Judicial Council regarding child custody evaluations. If directed by the court, the court-appointed child custody evaluator shall file a written confidential report on his or her evaluation. At least 10 days before any hearing regarding custody of the child, the report shall be filed with the clerk of the court in which the custody hearing will be conducted and served on the parties or their attorneys, and any other counsel appointed for the child pursuant to Section 3150. The report may be considered by the court.
- (b) The report shall not be made available other than as provided in subdivision (a), or as described in Section 204 of the Welfare and Institutions Code or Section 1514.5 of the Probate Code. Any information obtained from access to a juvenile court case file, as defined in subdivision (e) of Section 827 of the Welfare and Institutions Code, is confidential and shall only be disseminated as provided by paragraph (4) of subdivision (a) of Section 827 of the Welfare and Institutions Code.
- (c) The report may be received in evidence on stipulation of all interested parties and is competent evidence as to all matters contained in the report.
- (d) If the court determines that an unwarranted disclosure of a written confidential report has been made, the court may impose a monetary sanction against the disclosing party. The sanction shall be in an amount sufficient to deter repetition of the conduct, and may include reasonable attorney's fees, costs incurred, or both, unless the court finds that the disclosing party acted with substantial justification or that other circumstances make the imposition of the sanction unjust. The court shall not impose a sanction pursuant to this subdivision that imposes an unreasonable financial burden on the party against whom the sanction is imposed. This subdivision shall become operative on January 1, 2010.
- (e) The Judicial Council shall, by January 1, 2010, do the following:
- (1) Adopt a form to be served with every child custody evaluation report that informs the report recipient of the confidentiality of the report and the potential consequences for the unwarranted disclosure of the report.
 - (2) Adopt a rule of court to require that, when a court-ordered child custody evaluation report is served on the parties, the form specified in paragraph (1) shall be included with the report.
- (f) For purposes of this section, a disclosure is unwarranted if it is done either recklessly or maliciously, and is not in the best interests of the child.
- (e) Any of the parties permitted to possess a written confidential report may provide the report to the licensing board of the child custody evaluator for the purpose of investigating allegations that the child custody evaluator engaged in unprofessional conduct related to the creation of the report. Disclosure of the report in this manner shall not be considered an unwarranted disclosure.*

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Proposed Revisions to Family Code Section 3025.5

3025.5.

In any proceeding involving child custody or visitation rights, if a report containing psychological evaluations of a child or recommendations regarding custody of, or visitation with, a child is submitted to the court, including, but not limited to, a report created pursuant to Chapter 6 (commencing with Section 3110) of this part, a recommendation made to the court pursuant to Section 3183, and a written statement of issues and contentions pursuant to subdivision (b) of Section 3151, that information shall be contained in a document that shall be placed in the confidential portion of the court file of the proceeding, and may not be disclosed, except to the following persons:

- (a) A party to the proceeding and his or her attorney.
- (b) A federal or state law enforcement officer, judicial officer, court employee, or family court facilitator for the county in which the action was filed, or an employee or agent of that facilitator, acting within the scope of his or her duties.
- (c) Counsel appointed for the child pursuant to Section 3150.
- (d) Any other person upon order of the court for good cause.

Notwithstanding the above, the court shall release the child custody evaluation report created pursuant to Section 3117 to the child custody evaluator's licensing board, upon written request from that licensing board for the purpose of investigating allegations that the child custody evaluator engaged in unprofessional conduct related to the creation of the report.

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